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Part 1

General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision thereof for such employer, except:

(i) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954 and as such codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if the instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.

(5) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare; includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any such function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant thereto, as such act has been and may from time to time be amended.

(7) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(8) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium

other than cash, except that the term does not include that part of remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

History: **En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102.**

19-1-103. Exclusions. This chapter shall not apply to and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: **En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108.**

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(2) Pursuant to section 218(p)(1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby.

History: **En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979.**

Part 2

Administration

19-1-201. State agency to make rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History: **En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107.**

19-1-202. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, retirement division account. So much of the costs as are not defrayed by interest and income earned upon the contribution account, which has been credited to the earmarked revenue fund, retirement division account, as provided in 19-1-602, shall be paid to the state agency for deposit to the earmarked revenue fund, retirement division account, by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions.

History: **En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106.**

Part 3

Referendum and Certification

19-1-301. Authorization of referendum by governor. With respect to employees of the state other than highway patrolmen and with respect to highway patrolmen, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2).

19-1-302. Conduct of referendum. In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3).

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4).

19-1-304. Certification by governor. Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5).

Part 4

Federal-State Agreement

19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, is hereby authorized to enter, on behalf of the state, into an agreement with the secretary of health, education, and welfare, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part).

19-1-402. Contents of federal-state agreement. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages, as defined in 19-1-102, equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that such effective date may be made retroactive to the extent permitted by section 218(f) of the Social Security Act, as defined herein;

(4) all services which constitute employment as defined in 19-1-102 and are performed in the employ of the state by employees of the state shall be covered by the agreement; and

(5) all services which constitute employment as defined in 19-1-102, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under part 5 shall be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part).

Part 5

Plans for Employees of Political Subdivisions

19-1-501. Submission of plan. Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-502. Approval of plan by state agency. (1) A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) The state agency may not finally refuse to approve a plan submitted by a political subdivision under 19-1-501 and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-503. Required provisions of plan. No plan may be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services which constitute employment as defined in 19-1-102 and are performed in the employ of the political subdivisions by employees thereof will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require and will comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2).

Part 6

Contribution Account

19-1-601. Establishment of contribution account. There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund to be known as the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

19-1-602. Management of account. (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the earmarked revenue fund or funds of the state agency, to be used by it either to defray the costs of administering the state agency or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities, as it may determine.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3).

19-1-603. Limit on use of account. The contribution account shall be used and administered exclusively for the purpose of this chapter. Subject to the provisions of 19-1-602, withdrawals from the account shall be made solely for payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 19-1-401 and 19-1-402, payment of refunds provided for in 19-1-702, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

19-1-604. Payments from account. (1) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 19-1-401, 19-1-402, and the Social Security Act.

(2) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this part and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

Part 7

Payments into Contribution Account

19-1-701. Sources of funds in account. The contribution account shall consist of and there shall be deposited in such account:

(1) all contributions, interest, and penalties collected under 19-1-702 and 19-1-704 through 19-1-706;

(2) all moneys appropriated thereto by the legislature of the state of Montana;

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(4) all other moneys received for the account from any other source.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 shall be required to pay, for the period of such coverage, contributions with respect to wages (as defined in 19-1-102) equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after February 20, 1953.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund if adjustment is impracticable shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1.

19-1-703. Budgeting by state departments. Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

19-1-704. Contribution by political subdivision. Each political subdivision as to which a plan has been approved under part 5 of this chapter shall pay, at such time or times as the state agency may prescribe by regulation, contributions with respect to wages (as defined in 19-1-102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 19-1-401 and 19-1-402.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a).

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry upon employment after February 20, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 19-1-102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid.

(2) Contributions so collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b).

19-1-706. Collection of delinquent payments from political subdivision. Delinquent payments due under 19-1-704 may, with interest at the rate of 6% a year, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department, agency, or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5).

Part 8

Participation of Teachers

19-1-801. Purpose — general repeal. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this part to bring under the provisions of parts 1 through 7 of this chapter or any act amendatory thereof teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the federal Social Security Act.

History: En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: **En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.**

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: **En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109.**

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: **En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).**

19-1-813. Collection of contributions. The fiscal officer of the district shall thereafter collect the contributions required under the federal Social Security Act, section 218, from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.

History: **En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2).**

19-1-814. District's contribution to be first obligation. For the purposes of this part, the contributions with respect to services equivalent to the employer's tax established by the federal Social Security Act are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: **En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).**

19-1-815 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: **En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).**

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2).

19-1-823. Certification by governor. If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health, education, and welfare that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3).

19-1-824. Federal-state agreement. Upon certification, the governor shall designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4).

19-1-825. Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6).

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7).

CHAPTER 2

DEFERRED COMPENSATION

Part 1 — General Provisions

Section
19-2-101. Employee defined.
19-2-102. Deferred compensation programs permitted.

19-2-103. No effect on other retirement programs — taxes deferred.

Part 2 — Administration

19-2-201. Department of administration authorized to make contracts.
19-2-202. Administration of program.
19-2-203. Payments authorized.
19-2-204. Public entity not to be liable.
19-2-205. What private businesses may provide services.

Part 1

General Provisions

19-2-101. Employee defined. For the purposes of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision for which compensation is paid.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704.

19-2-102. Deferred compensation programs permitted. The state or any county, city, town, or other political subdivision may establish, after reaching agreement with any employee or the employee's representative, if one has been designated or certified, a program for the employee to defer any portion of his compensation up to the maximum allowed by the Internal Revenue Code in a plan qualified for exemption under applicable sections of the Internal Revenue Code.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701.

19-2-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee. For purposes of this chapter any qualified private pension plans now in existence shall qualify.

History: En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706.

Part 2

Administration

19-2-201. Department of administration authorized to make contracts. The department of administration is hereby authorized to enter into a contractual agreement with any employee or his representative, if one has been designated or certified, on behalf of the state to defer a portion of the employee's compensation through a qualified plan agreed upon by the employee or his representative. The department of administration may establish rules for the proper operation of plans agreed upon under this section.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702.

19-2-202. Administration of program. The coordination of the deferred compensation program shall be under the direction of the department of administration or its designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The coordinator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

History: En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703.

19-2-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to coordinate the deferred compensation program is hereby authorized to make payments to qualified plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705.

19-2-204. Public entity not to be liable. There shall be no financial liability of the state, county, city, town, or other political subdivision for any losses incurred by any plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707.

19-2-205. What private businesses may provide services. Qualified deferred compensation plans may be established only with companies, trusts, or agents licensed to do business in the state of Montana.

History: En. 68-2708 by Sec. 8, Ch. 264, L. 1974; amd. Sec. 3, Ch. 60, L. 1977; R.C.M. 1947, 68-2708.

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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Part 1

General Provisions

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-102. Purpose. The purpose of this chapter is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees and, to that end, providing a retirement system consisting of retirement compensation and death benefits.

History: **En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.**

19-3-103. Retirement system created. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

History: **En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502.**

19-3-104. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(3) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(6) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(7) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(8) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(9) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(12) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(13) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(14) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(15) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(16) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(17) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(18) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(19) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(20) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(21) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(22) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (11) of this section.

(23) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(24) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(25) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(28) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(29) "Retirement fund" means the public employees' retirement account in the agency fund.

(30) "Retirement system" means the public employees' retirement system created by this chapter.

(31) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(32) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(33) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979.

19-3-105. Exemption from taxes and legal process. The right of a person to a retirement allowance or any other benefit under this chapter and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever and shall be unassignable except as in this chapter specifically provided.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502.

19-3-106. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508.

Part 2

Contracts with Political Subdivisions

19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this chapter. The contract may include any provisions which are consistent with this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval and termination of the contract shall be subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot.

The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(b) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age, or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if, in its opinion, said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701.

19-3-202. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least 2 years, an employee of a municipal corporation, county, or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within 30 days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in 19-3-201.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702.

19-3-203. Conversion of local or state retirement plan. (1) Should the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting as provided in 19-3-201(2)(a) shall be limited to active members of the local system, and approval shall require an affirmative vote of two-thirds of such employees.

(2) All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer has the right to maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979.

Part 3

Administration of Retirement System

19-3-301. Location of board — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena.

(2) A quorum of the board shall be three members.

(3) The board shall elect one of its members president. The board may appoint a committee of one or more of its members which shall have authority to perform routine acts such as retirement of members and fixing of retirement allowances, approval of death claims, and correction of records necessary in the administration of the system in accordance with the provisions of this chapter and rules of the board. The attorney general shall be the legal counsel for the board.

(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801.

19-3-302. Compensation and expenses of board members. The travel expenses of members of the board shall be as allowed in 2-18-501 through 2-18-503, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation at the rate of $25 a day.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

19-3-303. Expenses of administration. All expenses of the administration of this chapter in excess of the amounts provided by the membership fees contributed pursuant to 19-3-805 shall be a charge on the appropriation made from the general fund of the state.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

19-3-304. Powers and duties of board. (1) The board may establish such rules as it deems proper for the administration and operation of the retirement system and enforcement of this chapter, subject to its limitation. The board shall establish those uniform rules as are necessary to determine credit for fractional years of service.

(2) The board shall determine who are employees within the meaning of this chapter. The board shall be the sole authority under this chapter as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this chapter. All persons in similar circumstances shall be treated alike.

(3) The board shall maintain such records and accounts it determines necessary for the administration of this chapter.

(4) Upon the basis of the findings of the actuary pursuant to 19-3-305, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this chapter.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1).

19-3-305. Employment of actuary — biennial investigation and valuation. The board shall retain, on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804.

19-3-306. Report by department of administration to governor. As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investments. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

History: **En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2).**

19-3-307. Employers to give board monthly report and other information. The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

History: **En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.**

Part 4

Membership

19-3-401. Membership. (1) All employees shall become members on the first day of employment. Each employee shall file with the board such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who reenters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon reentry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this chapter.

History: **En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601.**

19-3-402. Federally subsidized employees eligible. (1) A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 19-3-505 and 19-3-506.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510.

19-3-403. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 60 working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed by the legislature during the legislative session who do not file with the board an election in writing to become members;

(13) students of any public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing within 1 year after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city whichever is later.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 149, L. 1979, provided: "This act is effective on its passage and approval." Approved March 20, 1979.

19-3-404. Refund when member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(8) and before receiving his accumulated contributions shall be paid to the beneficiary nominated by him to receive any death benefit payable under 19-3-1201.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b).

19-3-405. Refund of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(8), shall be repaid to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c).

19-3-406. Termination of membership. If any part of a member's accumulated normal contributions is refunded pursuant to 19-3-703, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603.

Part 5

Service Credits

19-3-501. Absence not included in time of service. Except as provided in 19-3-502, 19-3-503, and 19-3-504, time during which a member is absent from compensated employment with an employer may not be allowed in computing service.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604.

19-3-502. Absence in military service. (1) Any period of absence from compensated employment with an employer for one of the following reasons, occurring either during a war involving the United States as a belligerent or during any other national emergency and 90 days thereafter, is considered service for the purpose of qualification for retirement and death benefits but not for calculation of retirement benefits:

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member so absent has the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does contribute, he shall receive credit for service for such time in the same manner as if he had

not been absent from service. Whenever a member elects to continue his contributions, the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) Any member so absent loses the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605.

19-3-503. Election to qualify military service for full credit. (1) (a) A member with 10 years or more of state service qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to 19-3-502.

(b) To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his 11th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of 10 years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal service retirement benefit, he may not qualify his military service under subsection (1) of this section. However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) of this section if his active duty in the armed forces of the United States is not more than 25% of the total sum of all years of military service including reserve and active duty time.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.

(2) Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. Whenever a member elects to continue his contributions, the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) A member must file with the board, within 6 months after he returns to service, a written notice of his intent to pay the contributions under subsection (2). The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board.

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis not to exceed 24 monthly payments.

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606.

19-3-505. Qualification of service with employer. (1) Subject to the provisions of this section, any person who has service with an employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board.

(2) (a) The person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been an employer and the interest which would have accumulated thereon to the time of such payment; provided that the employer may pay the employer's portion including accrued interest.

(b) The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the board. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the board. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board will determine the eligibility of all service credit requests as prescribed in 19-3-304.

(4) Payment may be made in one sum at the time of filing notice or on an installment basis. Installment payments shall not exceed 24 monthly payments. When the monthly payment exceeds 5% of compensation in the initial month of payment, the board may allow smaller payments over a period to exceed 24 months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter forfeit such person's right to make any further installment payments, unless permission is granted to do so by the board.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607.

19-3-506. Qualification of prior service not previously credited. If a member otherwise has not less than 5 years of creditable service of which not less than 3 years have been as a contributing member of the retirement system, he shall be granted credit for any prior service not previously granted upon his filing written notice thereof with the board. Proper certification of the prior service must be certified by the employer and furnished by the member.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

19-3-507. Transfer to and from and concurrent membership in teachers' retirement system. (1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, all service credits, both prior and membership, shall be transferred, except those that have been forfeited by withdrawal and have not been reinstated. The amounts transferred shall be determined by the boards of the systems by mutual agreement and shall be certified by the system from which the employee transfers.

(3) Any person who is concurrently employed by employers under both systems is entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this chapter. Eligibility of any such person for a retirement allowance, death benefit, or refund of contributions is governed by the provisions of the act creating the system to which the person last made contributions and is based upon the entire length of service for which he has been granted credit under both systems.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

19-3-508. No duplication of allowance when there is more than one period of service. There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2).

Part 6

Financial Management

19-3-601. Management of fund. The retirement fund shall be managed as follows:

(1) The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the fund except as otherwise provided by law.

(2) The department of administration shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is custodian of the retirement fund, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4).

19-3-602. Investment of fund. (1) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(2) Interest earned on any cash deposited in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5).

19-3-603. Restrictions on use of fund. (1) Except as herein provided, no member and no employee of the department of administration may:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7).

19-3-604. Transfer of dormant savings account. The board may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years. No right of the member shall be jeopardized by such transfer, and the savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907.

19-3-605. Transfer between funds. Any fund out of which payments are made under the provisions of this chapter may be reimbursed to the extent of such payments by transfer of a sufficient sum for the reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor the amounts to be thus transferred and the funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506.

19-3-606. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8).

Part 7

Employee Contributions

19-3-701. Member's contribution to be deducted. The normal contribution of each member shall be equal to 6% of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902.

19-3-702. Additional contributions allowed. Subject to the rules promulgated by the board, any member may elect to contribute at rates in excess of those provided for in 19-3-701 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903.

19-3-703. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests. If he has less than 5 years of service and he does not reenter service for a period of 5 years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn.

(2) Upon qualification for any other benefit under this chapter, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in 19-3-704.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the department of administration to make such direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979.

19-3-704. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service. He may reinstate that membership service by redepositing the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906.

Part 8

Employer Contributions

19-3-801. Employer contribution rates — actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be 5.90% from July 1, 1978, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The

unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

History: **En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part).**

19-3-802. Payment of contributions by state agencies — accompanying reports — penalty. (1) No later than the 15th day of each month or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later, the state auditor and each agency of the state which is not paid through the state central payroll system shall remit to the public employees' retirement system all contributions required of each employer and its employees under this chapter on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. These remittances shall be accompanied by such reports as the board requires.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater, from the appropriation account of the reporting agency by submission of a claim to the state treasurer. The board may, in its discretion, waive the interest penalty.

History: **En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 348, L. 1979, provided: "A statement of intent is included with this Bill because the Committee felt that there is a need to clarify the conditions under which an interest penalty may be waived. This pertains to Section 1, subsection (2) and Section 2, subsection (2), of Senate Bill No. 156.

1. When an agency or contracting employer requests a time extension upon a showing of good faith effort or because of circumstances beyond their control, the board will grant a reasonable extension of time without penalty."

19-3-803. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: **En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2).**

19-3-804. Payment of contributions by contracting employer — accompanying reports — penalty. (1) No later than the 15th day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this chapter on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is

greater. The board may, in its discretion, waive the interest penalty. The collection may be made by either of the following means:

(a) by an action therefor in a court of competent jurisdiction against the employer;

(b) by deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973; R.C.M. 1947, 68-2507; amd. Sec. 2, Ch. 348, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 348, L. 1979, provided: "A statement of intent is included with this Bill because the Committee felt that there is a need to clarify the conditions under which an interest penalty may be waived. This pertains to Section 1, subsection (2) and Section 2, subsection (2), of Senate Bill No. 156.

1. When an agency or contracting employer requests a time extension upon a showing of good faith effort or because of circumstances beyond their control, the board will grant a reasonable extension of time without penalty."

19-3-805. Employer contribution to administrative expense. (1) The board may assess and the department of administration shall collect a fee from each employer for the purpose of defraying the administrative expense of this chapter, not to exceed 0.3% of gross compensation.

(2) In addition to the contributions elsewhere provided in this chapter, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. These fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; 68-1904.

Part 9

Service Retirement

19-3-901. Eligibility for service retirement. A member who has attained the age of 60 and completed 5 years of qualified service is eligible for service retirement. A member who has attained age 65 is eligible for service retirement regardless of his years of creditable service. A member who has completed 30 years or more of state service is eligible for service retirement regardless of his age.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1).

19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age 55 and completed 5 years of qualified service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2).

19-3-903. Time of commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902 and filed the appropriate written application. The retirement allowance shall commence on the first day of the month following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002.

19-3-904. Amount of retirement allowance. (1) The annual amount of retirement allowance payable to a member following his service retirement is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one-sixtieth of his final compensation multiplied by the number of years of his creditable service;

(c) any retirement allowance payable under 19-3-905.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003.

19-3-905. Adjustment of allowance for certain members. The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004.

Compiler's Comments

Cost of living increase. Sec. 1, Ch. 293, L. 1979, provided: "Effective July 1, 1979, every service or disability retirement allowance or survivorship allowance then payable to a retired member or his beneficiary by the public employees' retirement system shall be increased by 0.45% for each month that the allowance was payable between January 1, 1977, and December 31, 1978."

19-3-906. Early retirement allowance. The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60 pursuant to 19-3-904.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005.

Part 10

Disability Retirement

19-3-1001. Definition. "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

19-3-1002. Eligibility for disability retirement. A member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1).**

19-3-1003. Determination by board. The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this part and of 19-3-1102 and 19-3-1103 and shall pay for those medical services and advice compensation the board deems reasonable.

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).**

19-3-1004. Waiver of early retirement eligibility. A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).**

19-3-1005. Application for disability retirement allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-1002 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

History: **En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part).**

19-3-1006. Time of commencement of allowance. The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

History: **En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part).**

19-3-1007. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded compensation by the workers' compensation division, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103.

Compiler's Comments

Cost of living increase. Sec. 1, Ch. 293, L. 1979, provided: "Effective July 1, 1979, every service or disability retirement allowance or survivorship allowance then payable to a retired member or his beneficiary by the public employees' retirement system shall be increased by 0.45% for each month that the allowance was payable between January 1, 1977, and December 31, 1978."

19-3-1008. Allowance for nonduty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (i) or (ii) as follows:

(i) a pension which, together with the annuity provided under subsection (b), shall make the retirement allowance equal to 90% of one-sixtieth of his final compensation multiplied by his years of creditable service;

(ii) a retirement allowance equal to 25% of his final compensation.

(2) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104.

Compiler's Comments

Cost of living increase. Sec. 1, Ch. 293, L. 1979, provided: "Effective July 1, 1979, every service or disability retirement allowance or survivorship allowance then payable to a retired member or his beneficiary by the public employees' retirement system shall be increased by 0.45% for each month that the allowance was payable between January 1, 1977, and December 31, 1978."

Part 11

Changes in Retirement Allowances

19-3-1101. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this chapter, into an optional retirement allowance which is the actuarial equivalent of the regular retirement allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) option 4—such other actuarially equivalent benefit as may be approved by the board.

(2) Election of an optional retirement allowance must be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant dies before the member has received the first payment under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then the election is void and the death is considered as that of a member before retirement.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203.

19-3-1102. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) A person whose retirement allowance is canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If a person whose retirement allowance is canceled is not reemployed in a position subject to the retirement system, his service is considered, for the purposes of 19-3-703, to have been discontinued coincident with the commencement of his retirement allowance.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201.

19-3-1103. Disability allowance reduced by earnings. Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in 19-3-104, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202.

19-3-1104. Cancellation of retirement allowance upon reemployment. Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement, and his retirement allowance shall be canceled.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part).

19-3-1105. Allowance upon a second retirement. (1) Upon retirement subsequent to a cancellation under 19-3-1104, a member shall be entitled to receive a recalculated benefit as provided in 19-3-904. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his reemployment.

(2) Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least 2 years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part).

19-3-1106. Reduction of retirement allowance upon limited reemployment. Any person receiving a service retirement allowance, not as a beneficiary, who is not eligible for membership may return to covered employment for a period not to exceed 60 working days in any fiscal year. The retirement allowance of a retiree so employed will be reduced by any earnings in excess of the minimum wage per month on $1 for $1 basis.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2).

Part 12

Death Benefits

19-3-1201. Eligibility for death benefits. The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

(1) while in service;

(2) within 4 months after the discontinuance of service but before retirement;

(3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than 4 months;

(4) while disabled, as defined in 19-3-1001, if he has been continuously so disabled from the discontinuance of his service but is not receiving a retirement allowance because of the disability.

History: **En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301.**

19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1) and (2), as follows:

(1) the member's accumulated contributions, together with regular interest on the accumulated normal contributions to the date of the member's death;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workers' compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment.

History: **En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302.**

19-3-1203. Election of optional death benefit. A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules as the board may adopt. Election of an optional death benefit shall be by written application.

History: **En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303.**

19-3-1204. Survivorship allowance elected by beneficiary. A beneficiary eligible to receive a death benefit may elect, by written application, a survivorship allowance instead, if all of the following conditions are met:

(1) The member on behalf of whom the death benefit is payable had completed 5 years of creditable service.

(2) The beneficiary is a natural person of legal age.

(3) The beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit.

History: **En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304.**

19-3-1205. Amount of survivorship allowance. The annual amount of survivorship allowance payable to a member's beneficiary shall be the actuarial equivalent of either:

(1) the accrued portion of the service retirement allowance which would have been payable to the member commencing at age 60 pursuant to 19-3-904, if he had not attained age 60 at the time of his death; or

(2) if the deceased member had attained age 60 or completed 30 years of service at the time of his death, the service retirement allowance which would have been payable to the member if he had retired immediately prior to his death.

History: **En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305.**

Compiler's Comments

Cost of living increase. Sec. 1, Ch. 293, L. 1979, provided: "Effective July 1, 1979, every service or disability retirement allowance or survivorship allowance then payable to a retired member or his beneficiary by the public employees' retirement system shall be increased by 0.45% for each month that the allowance was payable between January 1, 1977, and December 31, 1978."

Part 13

Beneficiaries

19-3-1301. Designation of beneficiary. The beneficiary of a member shall be such person as the member shall so designate in the appropriate written application. A member may revoke such designation and name a different beneficiary by filing a revised written instrument with the board.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part).

19-3-1302. Effect of no designation. (1) If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of said survivor's estate, share and share alike.

(2) Payment shall be made in the same order in which the following groups are listed:

(a) husband or wife;
(b) children;
(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated.

(4) The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part).

19-3-1303. Payment of part of death benefit directly for funeral. (1) If a member's beneficiary cannot be found within 90 days of the member's death or if the estate of the member is his beneficiary, the board, in its discretion, may pay all or a portion of the death benefit to the undertaker who conducted the funeral of the member or to any person or organization who paid the undertaker. The amount so paid by the board shall not exceed the funeral expenses or the portion of such expenses paid by the person or organization respectively, all as evidenced by the sworn itemized statement of the undertaker and by other documents the board may require.

(2) The payment shall be in full and complete discharge and acquittance of the board and system up to the amount so paid, anything in this chapter to the contrary notwithstanding.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(3).

19-3-1304. Payment to custodian of minor beneficiary. If any benefit from the system not to exceed $500 is payable to a minor who has no guardian of his estate, the benefit may be paid to the person entitled to the custody of a minor to hold for the minor, upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed $1,000 in value. The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: **En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402.**

Part 14

Management of Allowance Payments

19-3-1401. Estimate of allowance when information incomplete. If it shall be impracticable for the board to determine from the records the length of service, the compensation, or the age of any members or if any member refuses or fails to give the board a statement of his state service, his compensation, or his age, the board may estimate, for the purposes of this chapter, such length of service, compensation, or age.

History: **En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503.**

19-3-1402. Frequency of allowance payments. A retirement allowance or survivorship allowance granted under the provisions of this chapter shall be payable in monthly installments, except that the board, at its discretion, may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month.

History: **En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1).**

19-3-1403. Adjustment of errors in payments. If more or less than the correct amount of contribution required by this chapter of a member, the state, or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments or such adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

History: **En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509.**

19-3-1404. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1.

CHAPTER 4

TEACHERS' RETIREMENT

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Part 1

General Provisions

19-4-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service

which yield the highest average and on which contributions have been made as required by 19-4-602(1).

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part).

19-4-102. Retirement system. The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is hereby recognized as the state teachers' retirement system of the state of Montana, and no provisions of this chapter shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this chapter.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202.

19-4-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part).

19-4-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of annuity reserves in the annuity reserve fund, as provided for in this chapter, and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216.

19-4-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1).

Part 2

Administration of System

19-4-201. Administration by retirement board. The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and to this end, it is the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(3) keep a record of all its proceedings, which must be open to public inspection;

(4) publish a biennial report by January 1 of each year the legislature meets which reports in detail the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system and submit the biennial report to the governor and furnish copies to the legislature;

(5) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(6) prepare an annual valuation of the assets and liabilities of the retirement system;

(7) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(8) annually determine the rate of regular interest as prescribed in 19-4-501;

(9) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(10) perform such other duties and functions as are required to properly administer and operate the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18).

19-4-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive $25 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204.

19-4-203. Officers and employees of retirement board. It is the duty of the retirement board to:

(1) elect a chairman from its membership;

(2) appoint a secretary who may be one of its members;

(3) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;

(4) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;

(5) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10).

19-4-204. Board's policy governing creditable service. It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(1) One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one year's creditable service shall be awarded for service during the same school fiscal year.

(2) Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14).

19-4-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-4-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12).

19-4-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15).

19-4-207. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403(b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219.

19-4-208. Duties of employer. Each employer shall:

(1) deduct the contribution of each member employed by him at the rate prescribed by 19-4-602 from each salary payment for each payroll period and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 19-4-605, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part).

Part 3

Membership

19-4-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-4-302, he shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1).

19-4-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system, except as provided in 19-4-305;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209.

19-4-303. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member, when:

(1) he ceases to be employed in a capacity that allows his membership and he has 5 or more years of creditable service in the retirement system;

(2) he ceases to be employed in a capacity that allows his membership and he has less than 5 years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) he has 5 or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: **En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210.**

19-4-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated contributions to the retirement system under the provisions of 19-4-603; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 19-4-303(2).

History: **En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211.**

19-4-305. Exclusion — initially employed after age seventy. Initial employment of teachers in the Montana university system beyond the age of 70 may be made upon the recommendation of the president of the employing unit and the approval of the board of regents, but such employees shall be denied membership in the retirement system.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(c).**

Part 4

Creditable Service

19-4-401. Creditable service. (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403; and

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4).

19-4-402. Creditable service for out-of-state employment. A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979.

19-4-403. Creditable service for employment while on leave. A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2).

19-4-404. Creditable service for active service in military, red cross, or merchant marine. A person applying for membership may also apply for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3).

19-4-405. Limit on creditable service which can be awarded. The total creditable service for out-of-state teaching, employment while on leave, and active service in the armed forces of the United States or the American red cross or merchant marine may not exceed 5 years.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4).

19-4-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5).

19-4-407. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9).

Part 5

Management of Funds

19-4-501. Financial administration of moneys. The members of the retirement board are the trustees of all moneys collected for the retirement system, and as such trustees, they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of the funds during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-4-605(5), the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of 19-4-606.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which the moneys are invested. All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.

(5) All the funds established by part 6 of this chapter, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7).

19-4-502. Restrictions on use of moneys. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system, except as herein provided;

(b) directly or indirectly, for himself or as an agent, in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8).

19-4-503. Transfer of dormant savings account. The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. No right of the member may be jeopardized by such transfer, and the amount shall be transferred back to the member's annuity savings account upon his request.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6).

19-4-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9).

Part 6

Funds — Contributions

19-4-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1).

19-4-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date

on which the member became a member an amount equal to 6.187% of the member's earned compensation.

(2) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(4) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

History: **En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2).**

19-4-603. Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions from his annuity account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of subsection (1) or (3) of 19-4-303 may elect, without right of revocation, to withdraw his accumulated contributions. If he does not withdraw his accumulated contributions, he remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 19-4-303(2) may withdraw his accumulated contributions unless he returns to active membership.

(3) Any person whose membership terminates under the provisions of 19-4-304(4) may withdraw his accumulated contributions.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6).**

19-4-604. Annuity reserve fund. The annuity reserve fund is the fund in which the reserves on all annuities in force shall be held and from which all annuities and all benefits in lieu of annuities shall be paid. If a beneficiary retired on account of disability is restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

History: **En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(3).**

19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions shall be accumulated and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 6.312% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amounts required to allow regular interest on the annuity savings fund and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(6) All pensions and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also an amount to cover expenses of administration.

History: **En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4).**

19-4-606. Expense fund. The expense fund is the fund to which all moneys for the administrative expenses of the retirement system shall be credited and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund out of the pension accumulation fund from interest and other earnings realized on the moneys of the retirement system.

History: **En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5).**

Part 7

Benefits in General

19-4-701. Benefits. The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of this chapter.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1).

19-4-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in part 8 of this chapter and 19-4-902. If a beneficiary dies within 30 days after retirement, his election to receive an optional allowance is void and his death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of his retirement and provides an allowance payable to him throughout his lifetime and, upon his death, an allowance payable to the person that he nominated by written designation, duly acknowledged and filed with the retirement board at the time of his retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout his lifetime and, upon his death, continue throughout the lifetime of his designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout his lifetime, and upon his death, one-half of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout his lifetime, and upon his death, two-thirds of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor.

(f) Option F—some other benefit will be paid either to the member or his surviving designated beneficiary in accordance with provisions approved by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8).

19-4-703. Payments to be monthly. All pensions and annuities shall be paid in equal monthly installments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part).

19-4-704. Annual payment from extra income. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part).

19-4-705. Correction of erroneous payments. If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2).

19-4-706. Exemption from taxation and legal process. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are hereby exempted from any state, county, or municipal tax of the state of Montana and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as specifically provided.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215.

19-4-707. Increase in allowances of certain retirees. (1) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of $1 per month for each year of creditable service plus $2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of $2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

(2) The funds to pay for the increases in retirement allowances prescribed in subsection (1) shall be provided as follows:

(a) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 19-4-602(1); and

(b) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 19-4-605(1).

History: (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c).

Part 8

Superannuation Retirement

19-4-801. Eligibility for superannuation retirement. A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 60 or has been credited with full-time or part-time service in 30 or more years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a).

19-4-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 55 may retire from service and be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-4-804(1) and (2), with the exception that the allowance will be reduced by ½ of 1% multiplied by the number of months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d).

19-4-803. Mandatory superannuation retirement. (1) A member in service who has attained the age of 70 years during any school year must be retired on September 1 following his 70th birthday. This provision does not apply to teachers in the Montana university system, who may be employed beyond the age of 70 upon the recommendation of the president of the employing unit to the board of regents.

(2) A member over 70 years of age may not:

(a) be allowed creditable service for services rendered after the end of the school year in which the age of 70 was attained;

(b) contribute to the retirement system after the end of such school year; and

(c) have the compensation received after the end of such school year used in computing his average final compensation.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(b); amd. Sec. 5, Ch. 114, L. 1979.

19-4-804. Allowance for superannuation retirement. (1) Upon superannuation retirement a member shall receive a retirement allowance consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(2) The minimum annual retirement allowance for a member who has 30 or more years of creditable service is $2,400, and the minimum retirement

allowance for a member whose creditable service is less than 30 years is based on an amount which bears the same ratio to $2,400 as his service bears to 30 years.

(3) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b).

Part 9

Disability Retirement

19-4-901. Eligibility for disability retirement. Upon the application of an active member or of his employer for a disability retirement allowance, any active member who has 5 or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement. In order for a member to be eligible for disability retirement, the retirement board must certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent, and that he should be retired.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a).

19-4-902. Allowance for disability retirement. (1) Upon retirement for disability, a member shall receive the superannuation allowance and other benefits prescribed under part 8 of this chapter if he is eligible.

(2) If he is not eligible for the benefits prescribed under part 8 of this chapter, he shall receive a disability retirement allowance which consists of:

(a) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) a pension which, together with his annuity, provides a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-fourth of his average final compensation; otherwise, a pension which, together with his annuity, provides a total retirement allowance equal to one-fourth of his average final compensation.

(3) No allowance under subsection (2) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c).

19-4-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require and, upon the beneficiary's application, shall permit a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon.

(2) Should a disability beneficiary who has not yet attained the age of 60 refuse to submit to at least one medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b).

19-4-904. Adjustment of allowance. (1) If the medical board reports and certifies to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and if the retirement board concurs in such report, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation.

(2) If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation.

(3) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c).

19-4-905. Cancellation of allowance and restoration of membership. (1) If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force, and upon his subsequent retirement, he shall be credited with such prior service and all his subsequent service as a member.

(2) If he is restored to active service on or after the attainment of the age of 55 years, his pension upon subsequent retirement may not exceed the pension that he would have received had he remained in service during the period of his previous retirement or the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension

that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d).**

Part 10

Death Benefits

19-4-1001. Allowances for death of member. (1) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-4-802 and 19-4-804(1) and (2) in the same manner as if the member elected option A provided for in 19-4-702(2)(a).

(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of $500 is payable to his designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part).**

19-4-1002. Payments upon death of retiree. (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to his designated beneficiary.

(2) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part).**

CHAPTER 5

JUDGES' RETIREMENT

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Part 1

General Provisions

19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Beneficiary" means the person whom the contributor nominates by written designation, duly acknowledged and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means the annual current salary for the office retired from.

(7) "Fund" means the Montana judges' retirement system agency account.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Penalty retirement age" means 70 years of age.

(11) "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975; amd. Sec. 1, Ch. 63, L. 1977; amd. Sec. 5, Ch. 132, L. 1977; R.C.M. 1947, 93-1107.

19-5-102. Retirement system. There is a retirement system known as the Montana judges' retirement system, which is governed by the provisions of this chapter.

History: En. 93-1107.1 by Sec. 2, Ch. 63, L. 1977; R.C.M. 1947, 93-1107.1.

19-5-103. Call of retired judge for duty. (1) Every judge or justice receiving retirement pay under the provisions of this chapter shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited, and the preparation of opinions for and on behalf of the court. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. In addition, for each day of temporary service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered minus an amount equal to

one-twentieth of the monthly retirement allowance the retired justice or judge is receiving for each day of service rendered.

History: **En. Sec. 24, Ch. 289, L. 1967; R.C.M. 1947, 93-1130; amd. Sec. 1, ch. 254, L. 1979.**

19-5-104. Penalty for fraud. (1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court.

History: **En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).**

Part 2

Administration

19-5-201. Powers and duties of board. (1) The board is the trustee of all moneys collected for the retirement system and may establish such rules as it considers necessary. Within the limitations of this chapter, the board is charged with and is the authority as to its proper administration, operation, and enforcement. The board is the authority as to the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(2) The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables.

History: **En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).**

19-5-202. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, shall be paid from the fund.

(2) Before July 15 of each year, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund.

History: **En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110.**

Part 3

Membership and Service Allowance

19-5-301. Membership. (1) A judge or justice who was a member of the PERS prior to March 2, 1967, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1967.

(2) Every other judge of a district court or justice of the supreme court must be a member of the Montana judges' retirement system.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2).

19-5-302. Service credits. (1) In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this chapter. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

(2) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of a member.

History: (1)En. Sec. 8, Ch. 289, L. 1967; Sec. 93-1114, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1114, 93-1125(part).

19-5-303. Back payments by original members. (1) A judge or justice who was in service in either a district court or the supreme court of the state of Montana prior to July 1, 1967, may elect to make back payments to the date when he first entered the service of the judiciary. The back payments may be spread over a period of 5 years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by 60. The deduction increase shall be credited to the back payments owing and shall be continued until the full amount of the back payments has been paid.

(2) A deduction increase may be anticipated in part or in full by the contributor at any time. In order for the contributor to receive full credit for his service, it must be anticipated in full at the time of retirement. If it is not so anticipated and paid in full, the contributor's retirement allowance will be calculated for the total years and months on which contributions have been made in accordance with 19-5-502.

(3) Every contributor who elects to make back payments shall receive full credit for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(3).

19-5-304. Military service. (1) A member of the Montana judiciary inducted into the armed forces of the United States has the option to:

(a) continue his payments into the fund; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the fund the full amount of the payments within 2 years after his return to the Montana judiciary.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the judiciary.

History: En. Sec. 22, Ch. 289, L. 1967; amd. Sec. 9, Ch. 63, L. 1977; R.C.M. 1947, 93-1128.

Part 4

Judges' Retirement Fund — Contributions

19-5-401. Payments into fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and moneys in the fund shall be paid to the public employees' retirement division of the department of administration, which shall credit the payments to the fund. These funds may be commingled with funds of the PERS, but separate accounts shall be maintained for the Montana judges' retirement system.

History: En. Sec. 5, Ch. 289, L. 1967; amd. Sec. 4, Ch. 63, L. 1977; R.C.M. 1947, 93-1111.

19-5-402. Member's contribution deducted from salary. Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967; R.C.M. 1947, 93-1115.

19-5-403. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967; R.C.M. 1947, 93-1122.

19-5-404. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 60% of the fees collected under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 20% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund.

History: En. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 2, Ch. 548, L. 1977; R.C.M. 1947, 93-1116(part).

19-5-405. Limit on use of fund. The full amount of the fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the retirement benefits and expenses provided for herein. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: Ap. p. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 548, L. 1977; Sec. 93-1116, R.C.M. 1947; Ap. p. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; Sec. 93-1112, R.C.M. 1947; R.C.M. 1947, 93-1112(3), 93-1116(part).

19-5-406. Transfer of dormant savings accounts. The board may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years, provided that no right of the member shall be jeopardized by such transfer. The savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 27, Ch. 289, L. 1967; R.C.M. 1947, 93-1132.

19-5-407. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(4).

Part 5

Service Retirement

19-5-501. Eligibility for service retirement. (1) Any member who has completed at least 5 years or more service and has reached the age of 65 may retire and receive the proportional retirement allowances provided in 19-5-502.

(2) No retirement allowances may be approved by the board while the member is drawing full compensation as a judge or justice.

History: (1)En. Sec. 11, Ch. 289, L. 1967; Sec. 93-1117, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1117, 93-1125(part).

19-5-502. Service retirement allowance. Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 ⅓% per year of his final salary for the first 15 years' service and 1% per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967; R.C.M. 1947, 93-1118.

19-5-503. Involuntary retirement allowance. (1) If a contributor is involuntarily discontinued from service after having completed 5 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit.

(2) If a contributor is involuntarily discontinued from service after having completed 12 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502.

History: En. Sec. 14, Ch. 289, L. 1967; amd. Sec. 1, Ch. 89, L. 1975; amd. Sec. 8, Ch. 63, L. 1977; R.C.M. 1947, 93-1120.

19-5-504. Forfeiture of retirement allowance. Any judge or justice who becomes eligible for retirement hereunder but fails to make application therefor prior to his attaining the age of 70 years shall automatically waive all retirement benefits and shall receive a return of only such moneys equal to the accumulated deductions contributed by him, except that any judge or justice who is over the age of 70 years on July 1, 1967, or who shall attain such age before the expiration of his term shall be permitted to serve out the balance of his existing term without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this chapter, he shall automatically waive all retirement benefits hereunder and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967; R.C.M. 1947, 93-1121.

Part 6

Disability Retirement and Death Benefits

19-5-601. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half of his final salary or the allowance provided in 19-5-502, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502.

History: En. Sec. 13, Ch. 289, L. 1967; R.C.M. 1947, 93-1119.

19-5-602. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967; R.C.M. 1947, 93-1127.

19-5-603. Payments upon employment-related death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(2) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502.

History: En. Sec. 17, Ch. 289, L. 1967; R.C.M. 1947, 93-1123.

19-5-604. Payments in case of death from other causes. (1) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-5-503.

History: En. Sec. 18, Ch. 289, L. 1967; R.C.M. 1947, 93-1124.

Part 7

Benefits in General

19-5-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967; amd. Sec. 10, Ch. 63, L. 1977; R.C.M. 1947, 93-1131.

19-5-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature of the state of Montana.

History: En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; R.C.M. 1947, 93-1125(part).

19-5-703. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: **En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).**

19-5-704. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-5-705.

History: **En. Sec. 20, Ch. 289, L. 1967; amd. Sec. 10, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.**

19-5-705. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 93-1126.1 by Sec. 11, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.1.**

CHAPTER 6

HIGHWAY PATROL RETIREMENT

Part 1 — General Provisions

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Part 4 — Retirement Account—Contributions

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Part 5 — Service Retirement

19-6-501. Eligibility and application for service retirement allowance.
19-6-502. Service retirement allowance.
19-6-503. Involuntary retirement allowance.
19-6-504. Compulsory retirement allowance.

Part 6 — Disability Retirement and Death Benefits

19-6-601. Disability retirement allowance.
19-6-602. Nomination of beneficiary.
19-6-603. Payments upon employment-related death.
19-6-604. Payments upon death from other causes.

Part 7 — Benefits in General

19-6-701. Optional retirement allowance.
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19-6-704. Correction of erroneous payments.
19-6-705. Exemption from taxes and legal process.
19-6-706. Withholding of group insurance premium from retirement benefit.

Part 1

General Provisions

19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

(8) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon

which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member" means a person who has accumulated deductions in the account standing to his credit.

(11) "Member's annuity" means payments for life derived from contributions made by the member.

(12) "Optional retirement age" means the age at which a member may retire after 20 years' service.

(13) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(14) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977; R.C.M. 1947, 31-201; amd. Secs. 6, 7, Ch. 114, L. 1979.

19-6-102. Retirement system. There is a retirement system known as the Montana highway patrolmen's retirement system, which is governed by the provisions of this chapter.

History: En. Sec. 31-201.1 by Sec. 2, Ch. 65, L. 1977; R.C.M. 1947, 31-201.1.

19-6-103. Payments under workers' compensation. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: En. Sec. 27, Ch. 37, L. 1945; R.C.M. 1947, 31-227.

19-6-104. Penalty for fraud. (1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system.

(2) A person violating any of the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not exceeding $1,000 or imprisoned not exceeding 1 year or both fined and imprisoned.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(a), (2).

19-6-105. Subrogation. Where a third person is liable to the member or his dependents for injury or death, the state shall be subrogated to the right of the member or the dependents against such third person but only to the extent of the state annuity payable under this chapter by the state. Any recovery against such third person in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the member or the person designated by the member.

History: En. Sec. 26, Ch. 37, L. 1945; R.C.M. 1947, 31-226; amd. Sec. 7, Ch. 114, L. 1979.

Part 2

Administration

19-6-201. Board to make rules. The board is the trustee of all moneys collected for the retirement system. It may establish such rules as it considers necessary to carry out its functions under this chapter. The board shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part).

19-6-202. Board to keep actuarial data. The board shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the members to and the beneficiaries of the account and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-203. Administrative expenses. The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, shall be paid by the state of Montana by appropriation out of the general fund made on the basis of budgets submitted by the board.

History: En. Sec. 4, Ch. 37, L. 1945; R.C.M. 1947, 31-204.

Part 3

Membership and Credit for Service

19-6-301. Membership. All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

History: En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977; R.C.M. 1947, 31-207.

19-6-302. Computation of the service of a member. (1) In computing the length of service of a member for retirement purposes, full credit shall be given to each member for each year of service rendered to the patrol, including service rendered prior to July 1, 1945, if there is compliance with the provisions of this chapter. The time during which a member is absent from service without pay may not be counted in computing his service for retirement purposes, except as provided in 19-6-303 and 19-6-304 in regard to service with the armed forces of the United States.

(2) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: (1)En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977; Sec. 31-208, R.C.M. 1947; (2)En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; Sec. 31-220, R.C.M. 1947; R.C.M. 1947, 31-208(part), 31-220(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-303. Military service. (1) A member of the Montana highway patrol inducted into the armed forces of the United States has the option to:

(a) continue his payments into the fund; or

(b) allow the department to make his payments for him during his military service, in which event he must repay the fund the full amount of the payments within 2 years after his return to the Montana highway patrol.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the Montana highway patrol.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(1).

19-6-304. Election to qualify military service for full credit. (1) A member with 15 years or more of service with the Montana highway patrol may, at any time prior to his retirement, make a written election with the department to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to 19-6-303.

(2) To qualify this service he must contribute to the account the amount determined by the department due based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of 15 years.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(2).

Part 4

Retirement Account — Contributions

19-6-401. Payments into retirement account. All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement account in the agency fund.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part).

19-6-402. Member's contribution. Every member shall be required to contribute into the account a sum equal to 6 ½% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974; R.C.M. 1947, 31-209.

19-6-403. Refund of member's contribution. Where a member resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955; R.C.M. 1947, 31-217; amd. Sec. 7, Ch. 114, L. 1979.

19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to 16% of the salaries paid to the highway patrolmen who are covered by this account from the general fund.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975; R.C.M. 1947, 31-210; amd. Sec. 1, Ch. 226, L. 1979.

19-6-405. Investment of retirement account. When there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of $25,000, the excess will be invested by the board of investments as part of the long-term investment fund and any of the account less than $25,000 in amount shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part).

19-6-406. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(2).

19-6-407. Transfer of dormant savings accounts. The department may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of 10 years. However, no right of the member shall be jeopardized by the transfer, and the savings account shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974; R.C.M. 1947, 31-230.

19-6-408. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(3).

Part 5

Service Retirement

19-6-501. Eligibility and application for service retirement allowance. A member in service who has completed at least 25 years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof.

History: En. Sec 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974; R.C.M. 1947, 31-211.

19-6-502. Service retirement allowance. (1) Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity.

(2) The service retirement allowance shall be computed as follows:

(a) 20 through 25 years, 2% of his final salary for each year of service;

(b) over 25 years, 2% of his final salary for each year of service through the 25th plus 1% of his final salary for each year of service past 25.

History: En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977; R.C.M. 1947, 31-213.

19-6-503. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977; R.C.M. 1947, 31-215; amd. Sec. 7, Ch. 114, L. 1979.

19-6-504. Compulsory retirement allowance. Any member, regardless of his years of service, who has attained the age of 60 years shall forthwith be retired. If he shall have served 25 years or more, he shall receive the full retirement allowance as provided herein. If he shall have served less than 25 years, he shall be entitled to the same options as provided in 19-6-503.

History: En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955; R.C.M. 1947, 31-216.

Part 6

Disability Retirement and Death Benefits

19-6-601. Disability retirement allowance. In case of the total disability of a member, permanent in character, regardless of the length of service of the member, a disability retirement allowance shall be granted the member in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana highway patrol in line of duty, then such patrolman who is totally and permanently disabled shall be retired on total retirement allowance of one-half his average final salary regardless of his length of service.

History: En. Sec. 14, Ch. 37, L. 1945; amd. Sec. 1, Ch. 109, L. 1947; R.C.M. 1947, 31-214; amd. Sec. 7, Ch. 114, L. 1979.

19-6-602. Nomination of beneficiary. Every member may name his beneficiary by written designation, duly acknowledged and filed with the department, and may change the beneficiary in like manner.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977; R.C.M. 1947, 31-222; amd. Sec. 7, Ch. 114, L. 1979.

19-6-603. Payments upon employment-related death. (1) If the board shall find that a member died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary.

(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to any such beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable.

History: En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955; R.C.M. 1947, 31-218; amd. Sec. 7, Ch. 114, L. 1979.

19-6-604. Payments upon death from other causes. (1) If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-6-503.

History: En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955; R.C.M. 1947, 31-219.

Part 7

Benefits in General

19-6-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the department, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: **En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977; R.C.M. 1947, 31-228.**

19-6-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature of the state of Montana.

History: **En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; R.C.M. 1947, 31-220(part).**

Compiler's Comments

Extension of benefits. Sec. 1, Ch. 224, L. 1979, provided: "If no retirement allowance was payable on January 1, 1979, to the surviving spouse of a member of the Montana highway patrol under subsections (2) through (5) of section 1, Chapter 349, Laws of 1975, because of the exhaustion of benefits prior to that date, a retirement allowance of $300 per month shall be paid to such surviving spouse." (Sec. 1, Ch. 349, L. 1975, contains cost of living allowances under the Highway Patrolmen's Retirement System) Sec. 2 of Ch. 224, provided: "This act is effective on passage and approval." Approved March 22, 1979.

19-6-703. Board's authority to refuse payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a member to be retired or where the death of a member is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend, for as long a time as it sees fit, disbursement of the state annuity.

History: **En. Sec. 25, Ch. 37, L. 1945; R.C.M. 1947, 31-225; amd. Sec. 7, Ch. 114, L. 1979.**

19-6-704. Correction of erroneous payments. Should a change in records fraudulently made or a mistake in records inadvertently made result in a member or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of the error, the department shall correct the error and shall adjust the payments which shall be made to the member or annuitant in a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: **En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(b); amd. Sec. 7, Ch. 114, L. 1979.**

19-6-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-6-706.

History: **En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977; R.C.M. 1947, 31-221.**

19-6-706. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 31-221.1 by Sec. 4, Ch. 214, L. 1977; R.C.M. 1947, 31-221.1.**

CHAPTER 7

SHERIFFS' RETIREMENT

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Part 1

General Provisions

19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the

normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member" means any person who has accumulated deductions in the account to his credit.

(9) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(10) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(11) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(12) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "Service" means employment as a sheriff.

(15) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(16) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(17) "Vested retirement" means a retirement not for cause and before retirement age.

History: Ap. p. Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977; Sec. 68-2602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; Sec. 68-2603, R.C.M. 1947; R.C.M. 1947, 68-2602, 68-2603; amd. Sec. 8, Ch. 114, L. 1979.

19-7-102. Sheriffs' retirement system established. A retirement system is established for Montana sheriffs, which shall be known as the "sheriffs' retirement system". It will be an actuarial reserve system for the payment of death, disability, and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty.

History: En. 68-2601 by Sec. 1, Ch. 178, L. 1974; R.C.M. 1947, 68-2601.

19-7-103. Payments under workers' compensation. All payments provided for in this chapter, except as provided in 19-7-604, are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625.

19-7-104. Penalty for fraud. (1) No person shall knowingly make any false statement or permit to be falsified any record or records of this retirement system in an attempt to defraud the system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both.

History: En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(1), (3).

Part 2

Administration

19-7-201. Functions of the board. (1) The board is the trustee of all moneys collected for the retirement system and is charged with the proper administration, operation, and enforcement of this chapter. It may establish such rules as it considers necessary.

(2) The board shall prescribe the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(3) It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(1).

19-7-202. Expenses of administration. The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, shall be paid by the state of Montana.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part).

Part 3

Membership and Credit for Service

19-7-301. Membership. Every sheriff is required to become a member of the sheriffs' retirement system on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case he may at his option become a member of the sheriffs' retirement system. All sheriffs who become members of the sheriffs' retirement system must remain members so long as actively employed in such capacity.

History: En. 68-2607 by Sec. 7, Ch. 178, L. 1974; amd. Sec. 3, Ch. 59, L. 1977; R.C.M. 1947, 68-2607(part).

19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, no sheriff is eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs, except as provided in 19-7-301.

(2) No provision of this chapter is to be construed as to deny any sheriff any benefits accrued under provisions of the public employees' retirement system prior to July 1, 1974.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977; R.C.M. 1947, 68-2628.

19-7-303. Military service. (1) A member now on active duty in or hereafter inducted into the armed forces of the United States has the option to:

(a) continue payments into the account; or

(b) allow the board to make the payments during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to his former status as a sheriff.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service as a sheriff.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977; R.C.M. 1947, 68-2622.

19-7-304. Discharge or voluntary resignation prior to eligibility for retirement. When, before becoming entitled to the retirement allowance, a member resigns of his own volition or is discharged for cause other than incompetence, malfeasance in office, or unlawful conduct, he must:

(1) notify the board of his termination of eligibility and withdraw accumulated contributions standing to his credit at the time of his termination of eligibility; or

(2) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed 1 year pending reestablishment of eligibility.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(1).

19-7-305. Discharge for cause prior to eligibility for retirement. A member discharged for incompetence, malfeasance in office, or unlawful conduct prior to becoming entitled to a retirement allowance shall notify the board of the termination of eligibility. The member shall be paid the accumulated contributions standing to the member's credit at the time of termination of eligibility.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(2).

19-7-306. Reinstatement after withdrawal of contributions. (1) A member may deposit in the retirement fund, in one sum or in no more than 12 monthly or 24 semimonthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board.

(2) If a member who is reentering the retirement system after a termination of membership does not elect to make or does not make the redeposit, he must reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make the redeposit, his membership is continuous and unbroken by the last termination.

(3) Regardless of whether the redeposit is made, the documents held by the retirement system, as executed by the member prior to termination of membership, shall be held by the system for the same purposes as prior to the termination and beneficiaries nominated shall remain unchanged.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977; R.C.M. 1947, 68-2616.

19-7-307. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-308. Service under municipal police officers' retirement system prior to or following city-county consolidation. (1) A law enforcement officer who has not changed his employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if his combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which he last made contributions. A sheriff who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue his election. However, credit for service in the PERS which has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for disability retirement, death benefits, and a refund of contributions is governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of an officer described in subsection (1) shall be calculated separately for each system based on the service credited under each system. The final salary or final average salary for each calculation shall be based on the highest salary earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the final salary or final average salary.

History: En. Sec. 1, Ch. 122, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 122, L. 1979, provided: "Section 1 of this act shall be codified in chapter 7, Title 19, MCA, and all references in the MCA to such chapter 7 include section 1."

Retroactive application. Sec. 4, Ch. 122, L. 1979, provided: "This act applies retroactively to January 1, 1979."

Effective date. Sec. 5, Ch. 122, L. 1979, provided: "This act is effective retroactively to January 1, 1979."

Part 4

Sheriffs' Retirement Account — Contributions

19-7-401. Creation and management of sheriffs' retirement account. A sheriffs' retirement account is created within the public employees' retirement system. All moneys received under this chapter shall be credited to this account. The state treasurer shall be the custodian of the account and will respond to the exclusive administrative control of the board.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

19-7-402. Sources of money in the account. The following money shall be paid to the board, which shall credit such payments to the sheriffs' retirement system account:

(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;

(3) all contributions by the various counties as required by this chapter;

(4) all contributions by sheriffs as defined in this chapter;

(5) all interest on and increase of the investments and moneys under this chapter;

(6) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178, L. 1974; R.C.M. 1947, 68-2606.

19-7-403. Members' contributions deducted. Every member shall be required to contribute into the account 7% of his monthly salary, which shall be deducted from his salary and deposited to his credit in the account.

History: En. 68-2608 by Sec. 8, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part).

19-7-404. Counties' contributions. The various counties of Montana shall pay monthly 7.55% of each sheriff's gross salary into the retirement account created by this chapter.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part).

19-7-405. Investment of account. Whenever there is over $25,000 on deposit in the account, that amount will be invested by the board of investments as part of the long-term investment fund. Any of the account in an amount of $25,000 or less shall be invested by the board of investments as part of the short-term investment fund when so directed by the sheriffs' retirement board.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

19-7-406. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(2).

19-7-407. Transfer of dormant accumulated deductions. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the sheriffs' retirement account if the member's account has been dormant for a period of 10 years. However, no right of the member may be jeopardized by the transfer, and the accumulated deductions must be transferred back to the member's name upon his subsequent reentry into the system.

History: En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977; R.C.M. 1947, 68-2627.

19-7-408. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(3).

Part 5

Service Retirement

19-7-501. Eligibility and application for service retirement. (1) A sheriff in service who has completed at least 25 years of service and who has reached the age of 55 years may retire on a service retirement allowance upon written application to the board, submitted not less than 30 days or more than 90 days from the desired date of retirement. The application must state the date he desires to be retired.

(2) Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977; R.C.M. 1947, 68-2610.

19-7-502. Early retirement option. If a member has served 20 years of creditable service as a sheriff and has reached the age of 55 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 25 years of creditable service had he not retired.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974; R.C.M. 1947, 68-2611; amd. Sec. 9, Ch. 114, L. 1979.

19-7-503. Service retirement allowance. (1) The amount of any member's service retirement allowance shall be 2% of his final salary for each year of creditable service, up to a maximum of 50% of final salary.

(2) The member's retirement allowance shall be increased for any member who contributes after 25 years of service by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of 25 years of service.

History: En. 68-2608, 68-2612 by Secs. 8, 12, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part), 68-2612; amd. Sec. 10, Ch. 114, L. 1979.

19-7-504. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977; R.C.M. 1947, 68-2614.

Part 6

Disability Retirement and Death Benefits

19-7-601. Disability retirement allowance. (1) In the case of the permanent total disability of the member, regardless of the member's length of service, a disability retirement allowance shall be awarded to the member based on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total permanent disability is a direct result of member's service as a sheriff in the line of duty, then the member shall be awarded an allowance of one-half of his final salary.

(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.

History: En. 68-2613 by Sec. 13, Ch. 178, L. 1974; R.C.M. 1947, 68-2613.

19-7-602. Designation of beneficiary. Every member may name a beneficiary by a written acknowledged designation properly filed with the board and change the beneficiary in like manner. The designation and any changes may be filed with the board up until but not after the time of retirement.

History: En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977; R.C.M. 1947, 68-2621.

19-7-603. Payments in case of death after retirement. If a member dies before receiving in payments the amount of the accumulated deductions standing to his credit at the time of retirement, the balance shall be paid to the beneficiary.

History: En. 68-2617 by Sec. 17, Ch. 178, L. 1974; R.C.M. 1947, 68-2617.

19-7-604. Payments in case of death before retirement. (1) If a member dies before retirement, his beneficiary is entitled to elect among those of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) if the member was not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement allowance in the amount of 2% of the final salary for each year of service up to a maximum of 25 years;

(c) if the member was eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of 2% of the final salary for each year of service up to a maximum of 25 years;

(d) if the board finds that the member died as a direct and proximate result of injuries received in the course of employment and the beneficiary is other than the surviving spouse or minor children, a retirement allowance commencing on the member's death in the amount of 50% of the final salary, less the amount paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable;

(e) if the board finds that the member died as a direct and proximate result of injuries received in the course of employment and the beneficiary is the surviving spouse or minor children, whichever of the following that the beneficiary or the beneficiary's guardian elects:

(i) the retirement allowance provided for in subsection (1)(d); or

(ii) a retirement allowance to be paid to the guardian of the surviving minor children commencing on the member's death and consisting of $100 per month per surviving minor child of the deceased member, up to a maximum of $300 per month.

(2) Under the circumstances described in subsection (1)(d), the surviving spouse or, if there is no surviving spouse, the surviving minor children are entitled to the benefit provided for in subsection (1)(e)(ii).

(3) A beneficiary may not be paid for a period longer than the time it would have taken the deceased member to reach the age of 65 years or more than 15 years, whichever is greater.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977; R.C.M. 1947, 68-2618.

Part 7

Benefits in General

19-7-701. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 2—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977; R.C.M. 1947, 68-2626.

19-7-702. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislature of the state of Montana.

History: **En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).**

19-7-703. Board's authority to refuse to make payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend disbursement of the state annuity, in its discretion, for as long a time as it deems necessary. Where the illness or injury causing a member to retire, or where the death of a member or a member to be retired, is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend disbursement of the state annuity for as long as, in its discretion, it deems necessary.

History: **En. 68-2624 by Sec. 24, Ch. 178, L. 1974; R.C.M. 1947, 68-2624.**

19-7-704. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any member or beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the member or annuitant in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

History: **En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(2).**

19-7-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-7-706.

History: **En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.**

19-7-706. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.1.**

CHAPTER 8

GAME WARDENS' RETIREMENT

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Part 1

General Provisions

19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement account in the agency fund.

(2) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Optional retirement age" means the age at which a contributor may retire after 20 years service or more, provided that the contributor has reached the age of 55 years.

(11) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(12) "Retirement age" means the age at which a member retires as prescribed in 19-8-601.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(15) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys.

History: (1) thru (14)En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch. 332, L. 1977; Sec. 68-1401, R.C.M. 1947; (15)En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 68-1402, R.C.M. 1947; R.C.M. 1947, 68-1401, 68-1402; amd. Sec. 2, Ch. 218, L. 1979.

19-8-102. Retirement system. There is a retirement system known as the Montana state game wardens' retirement system, which is governed by the provisions of this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977; R.C.M. 1947, 68-1402.1.

19-8-103. Payments under workers' compensation. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the Workers' Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963; R.C.M. 1947, 68-1426.

19-8-104. Penalty for fraud. (1) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

Part 2

Administration

19-8-201. Board to make rules. The board is charged with the proper administration, operation, and enforcement of this chapter. The board may make such rules as it considers necessary and shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(1).

19-8-202. Board to keep actuarial data. The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and the beneficiaries and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(2).

19-8-203. Expenses of administration. The board may assess and the department of administration shall collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering this chapter. The fee may not exceed 0.3% of the total of all members' salaries.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(2); amd. Sec. 2, Ch. 218, L. 1979.

Part 3

Membership and Credit for Service

19-8-301. Membership. Except as provided in 19-8-302, each state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and who is assigned to law enforcement in the department of fish, wildlife, and parks shall become a member of the retirement system when first becoming a state game warden. Except as provided in 19-8-302, all state game wardens shall be members of the retirement system so long as actively employed in that capacity.

History: **En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979.**

19-8-302. Ineligibility for public employees' retirement system — transfer of membership. (1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens.

(2) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the fish and game department may retain membership in the retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

(3) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

History: **En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429.**

19-8-303. Credit for prior service. (1) If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this chapter.

(2) A state game warden shall be allowed service credit hereunder for any service prior to July 1, 1963, including other Montana state, county, or city service.

History: **(1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).**

19-8-304. Military service. (1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden.

History: **En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977; R.C.M. 1947, 68-1422.**

19-8-305. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

Part 4

Creation and Management of Retirement Account

19-8-401. Creation of state game wardens' retirement account. There is a state game wardens' retirement account in the agency fund and all moneys received under the provisions of this chapter shall be credited to that account.

History: En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; R.C.M. 1947, 68-1408(part).

19-8-402. Management of account. The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the account. The state treasurer is custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(2).

19-8-403. Investment of account. Whenever there is on deposit in the account a sum in excess of $25,000, such excess shall be invested by the board of investments as part of the long-term investment fund. The part of the account not in excess of $25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(3).

19-8-404. Restrictions on use of assets. The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(4).

19-8-405. Transfer of dormant accounts. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of 10 years; provided that no right of the member shall be jeopardized by such transfer. The accumulated deductions shall be transferred to the member's name upon subsequent reentry to membership.

History: En. Sec. 28, Ch. 130, L. 1963; R.C.M. 1947, 68-1428.

19-8-406. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(5).

Part 5

Contributions to Retirement Account

19-8-501. Contributions to the retirement account. The following shall be paid to the board and shall be credited by the board to the account:

(1) all contributions by the state from department of fish, wildlife, and parks moneys;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and moneys in the account.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(1); amd. Sec. 2, Ch. 218, L. 1979.

19-8-502. Member's contribution. Every member is required to contribute into the account a sum equal to 7% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

History: En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; R.C.M. 1947, 68-1409(part).

19-8-503. Refund of member's contribution. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963; R.C.M. 1947, 68-1416.

19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601, all such collections until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 640, L. 1979.

Part 6

Service Retirement

19-8-601. Time of retirement. (1) Any member in service who has completed at least 25 years of creditable service and who has reached the age of 55 years may retire on service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) Retirement shall be compulsory at age 60.

History: En. Sec. 11, Ch. 130, L. 1963; R.C.M. 1947, 68-1411.

19-8-602. Early retirement. If a contributor has served 20 years of creditable service as a state game warden and has reached the age of 55 years, he is hereby granted the option and privilege of retiring, and in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963; R.C.M. 1947, 68-1412.

19-8-603. Service retirement allowance. (1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity. The member's annuity is the actuarial equivalent of his accumulated deductions at the time of his retirement. The state annuity is an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 years of service.

(2) The retirement allowance of any member who contributes after 25 years of service shall be increased by an amount which is the actuarial equivalent of an annuity based on the member's contributions and the state contributions made after 25 years of service and standing to the member's credit at the time of his retirement.

History: (1)En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977; Sec. 68-1413, R.C.M. 1947; (2)En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; Sec. 68-1409, R.C.M. 1947; R.C.M. 1947, 68-1409(part), 68-1413.

19-8-604. Involuntary retirement allowance. If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity which is the actuarial equivalent of his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. Sec. 15, Ch. 130, L. 1963; amd. Sec. 10, Ch. 8, L. 1977; R.C.M. 1947, 68-1415.

Part 7

Disability Retirement and Death Benefits

19-8-701. Disability retirement allowance. (1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement.

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had

over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary.

History: En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974; R.C.M. 1947, 68-1414; amd. Sec. 2, Ch. 218, L. 1979.

19-8-702. Nomination of beneficiary. Each contributor may name his beneficiary by written designation, duly acknowledged and filed with the board, and may change the beneficiary in like manner. The designation and all changes must be filed with the board.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977; R.C.M. 1947, 68-1421.

19-8-703. Payments upon employment-related death. If the board finds that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable.

History: En. Sec. 17, Ch. 130, L. 1963; amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2, Ch. 578, L. 1977; R.C.M. 1947, 68-1417.

19-8-704. Payments upon death from other causes. (1) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604.

History: En. Sec. 18, Ch. 130, L. 1963; R.C.M. 1947, 68-1418.

Part 8

Benefits in General

19-8-801. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977; R.C.M. 1947, 68-1427.

19-8-802. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in equal monthly installments and may not be increased, decreased, revoked, or repealed unless by act of the legislature.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-803. Board's authority to refuse to make payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired or the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke, or suspend disbursement of the state annuity for as long a time as it sees fit.

History: En. Sec. 24, Ch. 130, L. 1963; R.C.M. 1947, 68-1424.

19-8-804. Correction of erroneous payments. Should any change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-805. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-8-806.

History: En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.

19-8-806. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.1.

CHAPTER 9

POLICE RETIREMENT — STATEWIDE PLAN

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Part 1

General Provisions

19-9-101. Short title. This chapter may be cited as the "Municipal Police Officers' Retirement Act".

History: **En. 11-1860 by Sec. 1, Ch. 456, L. 1977; R.C.M. 1947, 11-1860.**

19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police retirement funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the above-mentioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 10 of this title.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977; R.C.M. 1947, 11-1892; amd. Sec. 11, Ch. 114, L. 1979.

19-9-103. Municipal police officers' retirement system established. A municipal police officers' retirement system is established and shall be governed by the provisions of this chapter.

History: En. 11-1862 by Sec. 3, Ch. 456, L. 1977; R.C.M. 1947, 11-1862.

19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(6) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(7) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(8) "Fund" means the agency account in the treasury system designated for the use of the plan.

(9) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(10) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(11) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Member's annuity" means monthly payments for life derived from member contributions.

(13) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(14) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(15) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(16) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(17) "Plan" means the municipal police officers' retirement system created by this chapter.

(18) "Police officer" means a law enforcement officer employed by an employer.

(19) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(20) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(21) "Retirement allowance" means the employer annuity plus the member's annuity.

(22) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer.

History: (1) thru (14), (16) thru (22)En. 11-1861 by Sec. 2, Ch. 456, L. 1977; Sec. 11-1861, R.C.M. 1947; (15)En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; Sec. 11-1839.1, R.C.M. 1947; R.C.M. 1947, 11-1839.1, 11-1861; amd. Sec. 1, Ch. 457, L. 1979.

19-9-105. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, shall be transferred to the account provided for in 19-9-501. The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977; R.C.M. 1947, 11-1880.

19-9-106. Effect on members of prior plans. (1) All provisions of this plan are effective as to a member whose retirement date occurred prior to July 1, 1977, except the amount and mode of payment of such member's retirement allowance will remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977; R.C.M. 1947, 11-1881.

19-9-107. Election to join plan — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this chapter. Upon the enactment of such an ordinance, the provisions of this chapter become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-9-503(2) and (3).

History: En. 11-1885 by Sec. 26, Ch. 456, L. 1977; R.C.M. 1947, 11-1885; amd. Sec. 1, Ch. 375, L. 1979.

19-9-108. Penalty for fraud. (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(1), (3).

Part 2

Administration of Plan

19-9-201. Powers and duties of board. (1) The board is authorized to administer, interpret, and enforce the provisions of this chapter.

(2) The board shall establish such uniform rules as are necessary to administer the provisions of this chapter. The board is the sole authority under this chapter as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for retirement and disability under this chapter.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(1), (2).

19-9-202. Department to provide forms — information from employers. The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer this chapter, and the cities shall give the department of administration all data necessary to carry out the purpose and intent hereof.

History: En. 11-1891 by Sec. 32, Ch. 456, L. 1977; R.C.M. 1947, 11-1891.

19-9-203. Administrative expenses. The expense of administration of this chapter, exclusive of amounts required to be paid as benefits to or on behalf of a member, shall be borne by the state and shall be in addition to the amounts required of it as contributions.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977; R.C.M. 1947, 11-1883.

Part 3

Membership

19-9-301. Active membership. (1) A police officer becomes an active member under the plan:

(a) on the date his employment by an employer commences;

(b) on July 1, 1977, if he is employed by an employer on that date; or

(c) in the case of an employer which elects to join the plan as provided in 19-9-107, on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete such forms and furnish such proof as may be required by the board.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(1), (2).

19-9-302. Ineligibility for other retirement plans. No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(3).

19-9-303. Inactive membership. (1) An active member becomes an inactive member upon the occurrence of the earlier of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the date of commencement of an approved absence from active duty with an employer of a substantial duration.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

History: En. 11-1864 by Sec. 5, Ch. 456, L. 1977; R.C.M. 1947, 11-1864.

19-9-304. Termination of employment prior to retirement. Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-9-911.

History: **En. 11-1873 by Sec. 14, Ch. 456, L. 1977; R.C.M. 1947, 11-1873.**

19-9-305. Cessation of membership. A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

(2) the date of his death.

History: **En. 11-1865 by Sec. 6, Ch. 456, L. 1977; R.C.M. 1947, 11-1865.**

Part 4

Credited Service

19-9-401. Credited service to be cumulative. A member is entitled to benefits based upon the entire period of his credited service and final average salary without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

History: **En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(4).**

19-9-402. Military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: **En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).**

19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more

than 25% of the total of all his years of military service, including reserve and active duty time.

History: **En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1.**

19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation. A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in 19-7-308, is eligible for benefits as provided in 19-7-308.

History: **En. Sec. 2, Ch. 122, L. 1979.**

Compiler's Comments

Codification. Sec. 3, Ch. 122, L. 1979, provided: "Section 2 shall be codified in chapter 9, Title 19, MCA, and all references in the MCA to such chapter 9 include section 2."

Retroactive application. Sec. 4, Ch. 122, L. 1979, provided: "This act applies retroactively to January 1, 1979."

Effective date. Sec. 5, Ch. 122, L. 1979, provided: "This act is effective retroactively to January 1, 1979."

Part 5

Financial Management

19-9-501. Retirement account. On July 1, 1977, there will be an account in the agency fund to be maintained on behalf of the plan. The state treasurer is the custodian of the account subject to the exclusive administrative control of the board.

History: **En. 11-1879 by Sec. 20, Ch. 456, L. 1977; R.C.M. 1947, 11-1879.**

19-9-502. Management of funds by department of administration. Except as otherwise provided in this chapter, the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under this chapter in accordance with the rules dealing with the public employees' retirement system, insofar as such rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under this chapter may be commingled for investment purposes.

History: **En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(4).**

19-9-503. Unfunded liabilities. (1) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.

(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by

January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.

(4) The excess unfunded liabiliity for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in 19-9-601, 19-9-702, and 19-9-703, as amended by Chapter 375, Laws of 1979, and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.

(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.

(6) The time and method of settlement on the unfunded liability will be as agreed on by the administrator and the city. The minimum allowable payment must be equal to or greater than the interest due at the interest rate used in the actuarial study for the unfunded balance.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(4); amd. Sec. 2, Ch. 375, L. 1979.

19-9-504. Actuarial valuation. The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in 19-9-503. A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

History: En. 11-1882 by Sec. 23, Ch. 456, L. 1977; R.C.M. 1947, 11-1882.

19-9-505. Transfer of dormant member account. The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as a member.

History: En. 11-1888 by Sec. 29, Ch. 456, L. 1977; R.C.M. 1947, 11-1888.

Part 6

Employee Contributions

19-9-601. Member contributions. The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6% or, in the case of a member first employed by an employer as a police officer after June 30, 1979, 7 ½% of his monthly compensation, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer. The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers.

History: **En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(1); amd. Sec. 3, Ch. 375, L. 1979.**

19-9-602. Vesting and withdrawal of contributions. A member is at all times fully vested in the deductions made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with 19-9-304 and forfeit all rights and interest with respect to any benefits which would otherwise become payable under the plan.

History: **En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(2).**

19-9-603. Redeposit of amounts withdrawn upon reinstatement. (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions which he withdrew plus an amount equal to the interest which would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

History: **En. 11-1868 by Sec. 9, Ch. 456, L. 1977; R.C.M. 1947, 11-1868.**

Part 7

Employer and State Contributions

19-9-701. Payment of employer and state contributions. Employer and state contributions shall be paid to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

History: **En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(1).**

19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation paid to all active members during the preceding year, and the state's contribution shall be 14% of such compensation.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(2); amd. Sec. 4, Ch. 375, L. 1979.

19-9-703. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. The employer's contribution shall be 14% of the total monthly compensation paid to all active members during the preceding month and shall be payable monthly to the administrator.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(3); amd. Sec. 5, Ch. 375, L. 1979.

19-9-704. Taxing authority of employers. (1) For the purpose of making contributions required of a city under this chapter, when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977; R.C.M. 1947, 11-1884.

19-9-705. Other moneys credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the plan or because of any member's service as a police officer, except when specifically allowed to be retained by the member by his employer, and all moneys withheld from the monthly compensation of a member for violation of the rules of his employer shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by 19-9-703.

History: En. 11-1869 by Sec. 10, Ch. 456, L. 1977; R.C.M. 1947, 11-1869.

19-9-706. Contributions based on disability compensation. (1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service

and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system retirement account in the agency fund along with the interest to the public employees' retirement system agency fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system.

History: En Sec. 4, Ch. 290, L. 1979.

Compiler's Comments

Incorporation into Municipal Police Officers' Retirement Act. This section was enacted without any codification instructions. The apparent intent of the Legislature was that it become part of Title 19, chapter 9, and the Code Commissioner has codified it accordingly. This arrangement may affect a number of sections in Title 19, chapter 9, including 19-9-201 through 19-9-203. See 1-11-103(4).

Part 8

Service Retirement

19-9-801. Eligibility for service retirement. Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(3) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).

19-9-802. Election to serve additional years. (1) A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday, the mandatory retirement date.

(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year.

History: En. 11-1889, 11-1890 by Secs. 30, 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(2), 11-1890(part).

19-9-803. Application for service retirement. On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

History: En. 11-1870 by Sec. 11, Ch. 456, L. 1977; R.C.M. 1947, 11-1870.

19-9-804. Amount of retirement allowance. (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer or who is retired under 19-9-801(3) prior to reaching 20 years of service shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary.

(3) A police officer who is retired under 19-9-801(3) and who was theretofore eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2).

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

Part 9

Disability Retirement and Death Benefits

19-9-901. Board's determination of disability. The board shall determine whether a member has become totally and permanently disabled and whether the disability is duty-related. In the discharge of its duties regarding such determination, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(3).

19-9-902. Eligibility for disability retirement. If a member is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing on the day following the member's last day of membership service.

History: En. 11-1871 by Sec. 12, Ch. 456, L. 1977; R.C.M. 1947, 11-1871; amd. Sec. 1, Ch. 389, L. 1979.

19-9-903. Amount of retirement allowance. (1) A police officer who is eligible under 19-9-902 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

(2) A police officer who is retired under 19-9-902 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but had elected to serve additional years and

was then serving such additional years shall be paid for the additional years at the rate prescribed in 19-9-804(2).

History: **En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(4), (5).**

19-9-904. Termination of allowance. If an inactive member is determined by the board to be no longer totally and permanently disabled, his disability retirement allowance shall cease as of the date of such determination and he shall be notified of the determination by the board. The board may review the status of any inactive member at any time.

History: **En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(1).**

19-9-905. Reinstatement upon termination of allowance. (1) Any inactive member whose disability retirement allowance is cancelled as provided in 19-9-904 shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity. The board shall advise the employer that the disability retirement allowance has been cancelled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(2) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under 19-9-904, he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of such notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

History: **En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(2), (3).**

19-9-906 through 19-9-910 reserved.

19-9-911. Death benefits. (1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent minor children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married.

History: **En. 11-1875 by Sec. 16, Ch. 456, L. 1977; R.C.M. 1947, 11-1875.**

Part 10

Benefits in General

19-9-1001. Payment of retirement allowances. Retirement allowances under this chapter shall be paid out of the fund and shall be determined as provided in 19-9-802, 19-9-804, and 19-9-903.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

19-9-1002. Retirement allowances to be monthly and fixed. The retirement allowances granted under the provisions of this chapter shall be paid in monthly installments. They may not be increased or decreased, except as specifically provided herein, or repealed or revoked except by an act of the Montana legislature.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977; R.C.M. 1947, 11-1874.

19-9-1003. Correction of erroneous payments. If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(2).

19-9-1004. Board's authority to refuse to make payments. The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887.

19-9-1005. Exemption from taxes. Any money received as a retirement allowance in accordance with the provisions of this chapter is exempt from any state or municipal tax.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977; R.C.M. 1947, 11-1876.

19-9-1006. Protection from legal process — nonassignability. Except as provided in this chapter, the benefits payable hereunder are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process and no member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

History: En. 11-1877 by Sec. 18, Ch. 456, L. 1977; R.C.M. 1947, 11-1877; amd. Sec. 12, Ch. 114, L. 1979.

19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments from the plan, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The state auditor shall, upon receipt of the report referred to in subsection (2), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(5) to the administrator no later than May 31 of each year. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 on or before June 30 of each year until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

History: **En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 13, Ch. 114, L. 1979; amd. Sec. 2, Ch. 457, L. 1979.**

19-9-1008. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: **En. Sec. 14, Ch. 114, L. 1979.**

Compiler's Comments

Codification. Sec. 32, Ch. 114, L. 1979, provided: "Section 14 of this act is intended as an addition to Title 19, chapter 9, part 10, and the code commissioner shall codify it in that part. All references in MCA to Title 19, chapter 9, part 10, include section 14."

CHAPTER 10

POLICE RETIREMENT — LOCAL FUNDS

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Part 1

General Provisions

19-10-101. Definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in this chapter includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

History: **En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; R.C.M. 1947, 11-1839.1.**

Part 2

Management of Police Retirement Funds

19-10-201. Local boards of trustees of funds. (1) Each city or town which has a police retirement fund must have a board of trustees of such fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of the city or town. One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the chairman and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city which elects to participate in the municipal police officers' retirement system under 19-9-107 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act.

History: **(1) thru (3)En. Sec. 12, Ch. 120, L. 1929; re-en. Sec. 5108.12, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1977; Sec. 11-1828, R.C.M. 1947; (4)En. 82A-225, by Sec. 34, Ch. 456, L. 1977; Sec. 82A-225, R.C.M. 1947; R.C.M. 1947, 11-1828, 82A-225; amd. Sec. 15, Ch. 114, L. 1979.**

19-10-202. Limit on use of fund. A police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

History: En. Sec. 14, Ch. 120, L. 1929; re-en. Sec. 5108.14, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1830; amd. Sec. 16, Ch. 114, L. 1979.

19-10-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211, except that the funds may not be invested in common stocks. However, these funds may be invested under the provisions of 17-6-204.

History: (1)En. Sec. 11, Ch. 120, L. 1929; re-en. Sec. 5108.11, R.C.M. 1935; Sec. 11-1827, R.C.M. 1947; (2), (3)En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; Sec. 11-1829, R.C.M. 1947; (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1827, 11-1829(2), (3), 11-1836(part); amd. Sec. 17, Ch. 114, L. 1979.

19-10-204. Trustees' report to state auditor. The board of trustees of each police retirement fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund.

History: En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; R.C.M. 1947, 11-1836(part); amd. Sec. 18, Ch. 114, L. 1979.

19-10-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation shall consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request.

History: En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; R.C.M. 1947, 11-1829(1); amd. Sec. 1, Ch. 64, L. 1979; amd. Sec. 19, Ch. 114, L. 1979.

Part 3

Contributions to Funds

19-10-301. City's contribution to fund. Each city, other than one of the first or second class, which has a police retirement fund and which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-107 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund is such that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand.

History: **En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; re-en. Sec. 5108.7, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1823; amd. Sec. 20, Ch. 114, L. 1979.**

19-10-302. Officer's contribution deducted from salary. The treasurer of an incorporated city which has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list.

History: **En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1825; amd. Sec. 21, Ch. 114, L. 1979.**

19-10-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has 10 years or more of service, the amount paid shall include regular interest on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through such salary deductions, without interest.

History: **En. 11-1847 by Sec. 17, Ch. 335, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1847.**

19-10-304. Gifts and money to be applied to fund. The following shall be placed in the police retirement fund and transmitted promptly to the board of trustees:

(1) all money withheld from salaries of police officers for the violation of rules of the police department;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of a member of the police department, except when specifically allowed to be retained by the officer by the mayor, commissioners, and chief of police; and

(3) all money derived from the provisions of this chapter.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; re-en. Sec. 5108.10, R.C.M. 1935; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977; R.C.M. 1947, 11-1826; amd. Sec. 22, Ch. 114, L. 1979.

19-10-305. Annual state payments to municipality with police department. (1) At the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-11-512.

(2) The payments provided for by 19-10-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(4) Payments provided for in 19-10-205 and subsection (1) of this section are in addition to those provided for in 19-10-301.

History: (1)En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977; Sec. 11-1834, R.C.M. 1947; (2)En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975; Sec. 11-1835, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1834, 11-1835, 11-1836(part); amd. Sec. 23, Ch. 114, L. 1979.

Part 4

Eligibility for Retirement Benefits

19-10-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and shall retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(3) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall pass from the active list to the retired list.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part).

19-10-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(1)(d).

19-10-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under subsection (1) or (2) of 19-10-401 may transfer, as of the time he becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday.

(2) A police officer whose eligibility depends on 19-10-401(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year.

History: (1)En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1843, R.C.M. 1947; (2)En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(2), 11-1844(part).

19-10-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and passed into the retired list of police officers so as to enjoy all the benefits, pensions, and rights which accrue to police officers placed on the retired list in said city or town. The pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force.

History: En. Sec. 2, Ch. 205, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1809.

19-10-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part).

19-10-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: **En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 24, Ch. 114, L. 1979.**

Part 5

Benefits

19-10-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-10-401(1) or (2) and does not elect to serve any additional years as an active police officer or who is placed on the retired list under 19-10-401(3) prior to reaching 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(3) A police officer who is placed on the retired list under 19-10-401(3) and who was theretofore eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2) of this section.

History: **En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 25, Ch. 114, L. 1979.**

19-10-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-10-402 before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was

receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is placed on the retired list under 19-10-402 and who, at the time of his injury or disability, was eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in 19-10-501(2).

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 26, Ch. 114, L. 1979.

19-10-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) If the officer leaves one or more dependent minor children, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(2); amd. Sec. 27, Ch. 114, L. 1979.

19-10-504. Protection of benefits from legal process. The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505.

History: En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977; R.C.M. 1947, 11-1845.

19-10-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977; R.C.M. 1947, 11-1845.1.

19-10-506. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving such payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 19-10-305(2), to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-10-305(1).

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be

determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 28, Ch. 114, L. 1979.

CHAPTER 11

FIREFIGHTERS' RETIREMENT

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Part 1

General Provisions

19-11-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Association" means the fire department relief association provided for in 19-11-102.

(2) "Disability and pension fund" or "fund" means the fund provided for in 19-11-105.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firefighters or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

(5) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities or subsequent districts created for urban fire protection services.

History: (1) thru (4)En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1910.1, R.C.M. 1947; (5)En. 11-1910.2 by Sec. 2, Ch. 489, L. 1977; Sec. 11-1910.2, R.C.M. 1947; R.C.M. 1947, 11-1910.1, 11-1910.2.

19-11-102. Formation of fire department relief association — membership. (1) The confirmed members of a fire department, as defined in 19-11-101, may form a local association to be known as the fire department relief association of the city or town of .... (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has firefighting equipment in serviceable condition which has a value of $750 or more.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(1), (2).

19-11-103. Officers of association. When an association is formed, the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(3).

19-11-104. Board of trustees of association. A board of trustees of such fire department relief association shall be created to consist of seven members:

(1) the president of the fire department relief association and the chief of the fire department, if an active member of the association, shall be ex officio members; and

(2) five members to be elected by the members of such association at the annual election, to be held on or before April 15 of each year.

History: En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R.C.M. 1921; amd. Sec. 4, Ch. 58, L. 1927; R.C.M. 1947, 11-1913.

19-11-105. Establishment of disability and pension fund. A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 19-11-102.

History: En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; R.C.M. 1947, 11-1910(1).

19-11-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-11-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt therefor. Thereafter, the city treasurer shall, as moneys are received by him for the credit of the fund or association, turn the same over to the treasurer of the association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R.C.M. 1921; amd. Sec. 13, Ch. 58, L. 1927; re-en. Sec. 5131, R.C.M. 1935; amd. Sec. 9, Ch. 157, L. 1977; R.C.M. 1947, 11-1924.

19-11-107. Retention of firefighters' rights when local government consolidated. A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 19-11-104. Except as provided in this section, the disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(2).

Part 2

Management and Protection of Fund — All Municipalities

19-11-201. Management of fund. Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund. The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R.C.M. 1921; re-en. Sec. 5137, R.C.M. 1935; amd. Sec. 17, Ch. 157, L. 1977; Sec. 11-1930, R.C.M. 1947; En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en Sec 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; Sec. 11-1910, R.C.M 1947; R.C.M. 1947, 11-1910(2), 11-1930.

19-11-202. Treasurer's bond. No treasurer of an association may enter upon his duties until he has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of his duties according to law. The amount of the bond shall be approved by the association and may not exceed $25,000. The bond shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond will cover the faithful discharge of his duties as such.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(2).

19-11-203. Use of disability and pension fund. The fund may not be used for any purpose other than investment, as provided in parts 3 and 4 of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; R.C.M. 1947, 11-1928(1).

19-11-204. Audit and report by board of trustees. The board of trustees of the association shall audit the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(1).

19-11-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes money has been expended. They shall file the report with the association and a duplicate of it with the state auditor. No money may be paid to the treasurer of the association until the report is filed.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(1).

19-11-206. Authority of department of community affairs — mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of community affairs.

(2) When a complaint is made to the department of community affairs that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the association treasurer until the misspent money has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(3)(a), (3)(b).

19-11-207. Theft from funds. Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R.C.M. 1921; amd. Sec. 7, Ch. 58, L. 1927; re-en. Sec. 5124, R.C.M. 1935; amd. Sec. 44, Ch. 359, L. 1977; R.C.M. 1947, 11-1916.

19-11-208. Protection of fund as to bank depository securities. The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935;

amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(part).

Part 3

Management — First and Second Class Cities

19-11-301. Management of association. The management of the fire department relief associations in first- and second-class cities is vested in the boards of trustees of the associations subject to the provisions of 19-11-302 and 19-11-303.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(a).

19-11-302. Investment of fund. The board of trustees shall remit the excess over the greater of the following amounts to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided by 17-6-204, whenever the moneys in the disability and pension fund exceed:

(1) 1 ½ times the monthly benefit paid in the preceding month; or

(2) $5,000.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(c).

19-11-303. Actuarial valuation of fund. (1) The board of trustees shall submit to the department of community affairs before October 1 in each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the fund. The valuation shall consider the actuarial soundness of the fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any other organization considered by the municipal audit division to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated by the request.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(b).

Part 4

Management — Other Municipalities

19-11-401. Management of association. The management of the fire department relief associations in municipalities other than first- and second-class cities is vested in the boards of trustees, except as provided in 19-11-402 and 19-11-403.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(a).

19-11-402. Investment of fund by trustees. (1) Subject to the provisions of 19-11-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, or savings and loan association operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association".

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(b); amd. Sec. 1, Ch. 393, L. 1979.

19-11-403. Investment of fund by board of investments. When the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-11-402, the surplus money in the fund shall be remitted to the state treasurer for investment by the board of investments as is provided in 19-11-302 for associations in first- and second-class cities. The department of community affairs shall advise the association of the current yield on investments of public retirement funds.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979.

Part 5

Contributions to Fund

19-11-501. Contributions to fund. The disability and pension fund shall consist of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly fee which shall be paid into the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-11-503 and 19-11-504;

(4) all moneys received from the state, including those provided for in 19-11-512; and

(5) all interest and other income earned from the investment of the fund.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; R.C.M. 1947, 11-1911(1).

19-11-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all his monthly contributions to the fund, within 60 days after his permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify him or his surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-11-603 may either elect to take the refund provided for in this section or elect to receive the partial pension.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1911(2).

19-11-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 2% of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than 2% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(1).

19-11-504. Amount of special tax levy. (1) Whenever the total amount of the fund is less than 2% of the taxable valuation of all taxable property within the limits of the city or town, the special tax levy shall be:

(a) not less than 1 mill or more than 4 mills on each dollar of taxable valuation of all taxable property within the limits of the city or town; and

(b) an amount sufficient to provide a growth per year in the fund, considering all sources of income to the fund and the payment of obligations out of the fund, equal to the sum produced by 1 mill levied on the taxable valuation of all the taxable property in the city or town.

(2) The special tax levy shall be a fractional part of 1 mill whenever:

(a) the total amount of the fund is less than 2% but more than 1% of the taxable valuation of all taxable property within the city or town; and

(b) the special tax levy of a fractional part of 1 mill will produce sufficient revenue to cause the fund, considering all sources of income to the fund and all payments to be made out of the fund, to exceed 2% of the taxable valuation of all taxable property within the city or town.

(3) In cities of the third class, when the fund contains an amount which is less than 2% of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(2).

19-11-505 through 19-11-510 reserved.

19-11-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R.C.M. 1921; re-en. Sec. 5125, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1975; R.C.M. 1947, 11-1917.

19-11-512. State auditor to pay association out of insurance premium taxes. (1) At the end of the fiscal year, the state auditor shall issue and deliver the payment described in this subsection to the board of investments to be credited to the account of each fire department relief association of any city or town of the first or second class which has a fire department relief association entitled by law to receive payments. The state auditor shall, at the same time, report to the treasurer of the association the amount of the payment. The payment shall be for the use and benefit of the association. It shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor and shall be equal to 10% of the total annual compensation paid by the city or town to its paid or part-paid firefighters for services in the previous calendar year. The city clerk of the city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by the city or town as compensation for services to paid or part-paid firefighters.

(2) When there is a disaster resulting in death or injury sufficient to draw the pensions of 10% of the active force and the fund, after receiving all moneys provided for in 19-11-501, 19-11-503, 19-11-504, and subsection (1) of this section, does not show at least the 1-mill growth referred to in 19-11-504, the treasurer of the association shall request and the state auditor shall issue and deliver an additional payment under the same conditions described in subsection (1). The payment shall be in an amount sufficient to cause at least the above-mentioned 1-mill growth in the fund.

(3) If a city is not entitled to receive a sum equal to 1 ½ mills of its total taxable value under subsections (1) and (2), the payment shall be made in

the amount provided in subsections (4) and (5) for cities of the third class and in the manner described in subsection (1).

(4) At the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town, except cities and towns of the first or second class, which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(6) The risks referred to in subsections (1) and (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R.C.M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; re-en. Sec. 5127, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 27, Ch. 566, L. 1977; R.C.M. 1947, 11-1919; amd. Sec. 1, Ch. 296, L. 1979.

19-11-513. Transfer of premium taxes to state treasury. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this chapter and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. The state auditor shall pay the actuary fee as required by 19-11-303. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; re-en. Sec. 5127.1, R.C.M. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974; R.C.M. 1947, 11-1920.

19-11-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this chapter, to pay:

(1) in the case of a municipality other than a city of the first or second class, to the treasurer of the city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association;

(2) in the case of a city of the first or second class, to the board of investments to be credited to the account of the fire department relief association, out of the money in the earmarked revenue fund dedicated for such purpose, the amount of the warrant.

History: **En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R.C.M. 1921; amd. Sec. 10, Ch. 58, L. 1927; re-en. Sec. 5128, R.C.M. 1935; amd. Sec. 70, Ch. 147, L. 1963; R.C.M. 1947, 11-1921; amd. Sec. 2, Ch. 296, L. 1979.**

Part 6

Benefits

19-11-601. Benefits the association may provide. Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) to a member who has become maimed or disabled for life in line of duty;

(3) to a member who has suffered injury in line of duty;

(4) to a member who has contracted sickness in line of duty;

(5) funeral expenses of a member;

(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.

History: **En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; R.C.M. 1947, 11-1915(part).**

19-11-602. Service pension. (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department. No member is eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed $100 a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund, as required by 19-11-501, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of his age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of his age.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R.C.M. 1921; amd. Sec. 14, Ch. 58, L. 1927; re-en. Sec. 5132, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1925.

19-11-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active firefighter;

(b) is permanently separated from service on or after July 1, 1977;

(c) does not qualify for a disability pension under 19-11-604; and

(d) does not receive a refund of his contributions under 19-11-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the firefighter dies after he is permanently separated from service and before he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the firefighter dies after he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-11-602 do not apply to pensions received under this section.

History: En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977; R.C.M. 1947, 11-1925.1; amd. Sec. 29, Ch. 114, L. 1979.

19-11-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $75 a month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R.C.M. 1921; amd. Sec. 15, Ch. 58, L. 1927; re-en. Sec. 5133, R.C.M. 1935; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1926.

19-11-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-11-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-11-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed $75 per month.

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-11-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-11-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R.C.M. 1921; amd. Sec. 16, Ch. 58, L. 1927; re-en. Sec. 5134, R.C.M. 1935; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L. 1975; amd. Sec. 12, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.

19-11-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½% on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section. As those persons who are to receive the fund die, the tax shall be reduced proportionately, and when no eligible person, as defined by subsection (2), survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the earmarked revenue fund and deliver, in the case of a municipality other than a city of the first or second class, to the treasurer of the respective city or town or, in the case of a city of the first or second class, to the board of investments to be credited to the account of the fire department relief association an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year.

History: En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.2; amd. Sec. 3, Ch. 296, L. 1979.

19-11-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.1.

19-11-608 through 19-11-610 reserved.

19-11-611. Procedure — applying for and collecting benefits. (1) All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance, and claimant shall have the right to appeal to the association in the event the claim be disallowed.

(2) All claims shall be paid by warrant, duly authorized, drawn by the secretary and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

History: (1)En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd.

Sec. 4, Ch. 535, L. 1975; Sec. 11-1915, R.C.M. 1947; (2)En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; Sec. 11-1928, R.C.M. 1947; R.C.M. 1947, 11-1915(part), 11-1928(2).

19-11-612. Protection of benefits from legal process — nonassignability. Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R.C.M. 1921; re-en. Sec. 5136, R.C.M. 1935; amd. Sec. 16, Ch. 157, L. 1977; R.C.M. 1947, 11-1929; amd. Sec. 30, Ch. 114, L. 1979.

CHAPTER 12

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

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Section

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Part 1

General Provisions

19-12-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

History: En. Sec. 1, Ch. 65, L. 1935; re-en. Sec. 5158.1, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.

19-12-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Board" means the public employees' retirement board of the public employees' retirement system.

(2) "Division" means the division of workers' compensation of the department of labor and industry.

(3) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(4) The fiscal year begins on July 1 and ends on June 30 of each year.

(5) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' compensation account in the agency fund.

History: (1) thru (3), (5)En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2020.1, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; Sec. 11-2022, R.C.M. 1947; R.C.M. 1947, 11-2020.1, 11-2022(5)(d).

19-12-103. Payments to volunteer fire companies maintaining group insurance. To encourage and aid volunteer fire companies to maintain group insurance for benefits on account of the death of or injury incurred by members while in the performance of duties as volunteer firefighters, $75 per year for each mobile unit of firefighting equipment, not exceeding two units for any one company, shall be paid by the division from the volunteer firefighters' fund to each volunteer fire company maintaining such insurance or to the organization or agency maintaining such insurance for a volunteer fire company.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(4).

19-12-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies such statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 12, Ch. 65, L. 1935; re-en. Sec. 5158.12, R.C.M. 1935; amd. Sec. 30, Ch. 157, L. 1977; R.C.M. 1947, 11-2031; amd. Sec. 31, Ch. 114, L. 1979.

Part 2

Administration of Fund

19-12-201. Administration of chapter. (1) Except as provided in subsection (2), the division shall administer the Volunteer Firefighters' Compensation Act, and all payments made under 19-12-103 and 19-12-506 shall be made by warrants drawn by the division.

(2) The board shall administer the volunteer firefighters' pension plan, and all payments made under 19-12-405 and 19-12-407 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before the 15th day after the close of the fiscal year, the division shall notify the board in writing of the balance remaining in the volunteer firefighters' fund as of the end of the fiscal year.

History: En. Sec. 7, Ch. 65, L. 1935; re-en. Sec. 5158.7, R.C.M. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 26, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2026.

19-12-202. Reports of division and public employees' retirement system. (1) The division shall, at the time specified in 39-71-210 for making the report therein required, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act, with such suggestions or recommendations as it may consider of value for public information.

(2) The public employees' retirement system shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the volunteer firefighters' pension plan, with such suggestions or recommendations as it may consider of value for public information.

(3) Copies of all such reports shall be made available by the division or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies which may at any time request them.

History: En. Sec. 10, Ch. 65, L. 1935; re-en. Sec. 5158.10, R.C.M. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2029.

19-12-203. Rules to be made by division and board. The division and the board shall make such rules as each considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act, not inconsistent with the provisions thereof.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(1).

19-12-204. Office supplies to be a charge against the fund. Necessary expenses of the division and the public employees' retirement system for office supplies, stationery, and forms in connection with the administration of the Volunteer Firefighters' Compensation Act are a charge against the fund. The public employees' retirement system shall draw from the fund through warrants executed by the division upon the request of the public employees' retirement system, at such intervals as the board considers proper.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(2).

Part 3

Contributions to Fund

19-12-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-11-512, computed after the amounts provided for by 19-11-512 have first been deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter.

History: En. Sec. 11, Ch. 65, L. 1935; re-en. Sec. 5158.11, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 204, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977; R.C.M. 1947, 11-2030.

19-12-302. Earnings to be part of moneys. All earnings made by moneys received under 19-12-301 by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; re-en. Sec. 5158.9, R.C.M. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977; R.C.M. 1947, 11-2028.

Part 4

Pension Benefits

19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) He must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

(3) During each of the years for which he claims credit under subsection (1), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(4) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) He must have ceased to be an active member of any volunteer fire company, and if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(2).

19-12-402. Certificate of eligibility. On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the public employees' retirement system a certificate, subscribed and verified under oath, stating whether or not his company qualified under 19-12-401(4) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-12-401(3). The verified certificate shall be maintained in a permanent file by the public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firefighters' pension plan and shall be open for inspection as a public record.

History: En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.2.

19-12-403. Procedure for claiming pension benefits. (1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by that system. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The public employees' retirement system may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-12-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the public employees' retirement system to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(2).

19-12-404. Pension benefits. (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in 19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments shall be computed each year in the following manner:

(a) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $1 million, the division shall set aside and pay over to the public employees' retirement system the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year.

(b) The total pension payable to a qualified claimant under this section may not exceed $100 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $100 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(3) If the amount set aside is sufficient to pay each qualified claimant at least $20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount set

aside is not sufficient to pay each qualified claimant at least $20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(5)(a) thru (5)(c).

19-12-405. Pension benefits to surviving spouse or children. (1) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death after February 27, 1971, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least $2,000; or

(d) the death of a volunteer firefighter after February 27, 1971, and after he has qualified for partial participation but before he has received payments totaling the proportion of $2,000 determined under the formula prescribed in 19-12-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of $2,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of $2,000 determined under the formula prescribed in 19-12-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(3), (4).

19-12-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(5).

19-12-407. Payment of pension benefits. All payments under the volunteer firefighters' pension plan must be approved by the public employees' retirement system and paid by warrants drawn upon the agency fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1).

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(2).

Part 5

Disability and Death Benefits

19-12-501. Eligibility for disability and death benefits. In order to qualify for benefits under 19-12-504 and 19-12-505, a firefighter must, at the time the injury or sickness for which benefits are claimed was incurred or, in the case of a claim under 19-12-505, at the time of death, have been an enrolled active member of a fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(1).

19-12-502. Procedure for claiming disability benefits. (1) A firefighter claiming benefits under 19-12-504 must file his claim with the division on a form to be provided therefor. The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the division within 1 year from the date of disability.

(2) The claim must contain:

(a) the name and address of the claimant;

(b) the date, place, and manner of incurring of disability;

(c) the name and address of the attending physician or surgeon and/or nurse, if any;

(d) the dates of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(e) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(f) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(g) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty;

(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(1).

19-12-503. Procedure for claiming death benefit. Anyone claiming the benefit provided for in 19-12-505 must file his claim with the division upon a form to be provided therefor by the division, in accordance with such rules as the division may make.

History: En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977; R.C.M. 1947, 11-2024.1.

19-12-504. Disability benefits. (1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the division shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; R.C.M. 1947, 11-2022(1), (2).

19-12-505. Death benefit. To aid in defraying the funeral expenses of a firefighter covered under this chapter whose death occurs in the line of duty, an amount not to exceed the actual necessary and reasonable expenses or $1,500, whichever is less, shall be allowed.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(3).

19-12-506. Payment of disability and death benefits. When a claim under 19-12-504 or 19-12-505 is received by the division and is found to be in compliance with 19-12-502 or, in the case of a claim under 19-12-505, with 19-12-503, the division must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(1).

TITLE 20

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CHAPTER 1

GENERAL PROVISIONS

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Part 1

Definitions

20-1-101. *(Temporary)* **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the superintendent of public instruction upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the superintendent of public instruction. Postsecondary

vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older but has not yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance

and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

20-1-101. *(Effective July 1, 1980)* **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the superintendent of public instruction upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the superintendent of public instruction. Postsecondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled

by special permission of the board of trustees under 20-5-101(3) but has not yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

History: (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec. 393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801,

75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 334, L. 1979, provided: "This act is effective on July 1, 1980."

Part 2

Miscellaneous Provisions

20-1-201. School officers not to act as agents. The superintendent of public instruction or members of his staff, county superintendent or members of his staff, trustee, or district employee shall not act as an agent or solicitor in the sale or supply of goods or services to a district. No such person shall assist or receive a reward from an agent or solicitor of goods or services for a district. Any such person violating this section shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $50 or more than $200 and shall be liable to removal from his position. The penalties provided by this section shall not be applicable if the charge and conviction are made under the provisions of 20-7-608.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303.

20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. In case an officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for such public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers, and moneys pertaining to the position to his successor. Any such person who shall refuse to do so or who shall willfully destroy any such material or misappropriate any moneys entrusted to him shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $10 or more than $100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

20-1-208. Educational impact statements. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

20-1-209. Judicial enforcement. A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

20-1-210. Nonfaculty coaches in private high schools. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) After July 1, 1921, no school district officer or employee of any school district shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to such association and the necessary traveling expenses of employees or members of said board to attend meetings of such association or other meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

20-1-212. Destruction of old records by officer. A school officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of community affairs.

History: En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2).

Part 3

School Terms and Holidays — Released Time

20-1-301. School fiscal year. The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979.

20-1-302. School day and week. Subject to 20-1-308, a school day of pupil instruction shall be at least 2 hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in any one school day for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided, pupil instruction shall not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the superintendent of public instruction in accordance with the policies adopted by the board of public education.

History: En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404.

20-1-304. Pupil-instruction-related day. A pupil-instruction-related day shall be a day of teacher activities devoted to improving the quality of instruction. Such activities may include but are not limited to in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, provided that such days are approved by the superintendent of public instruction in accordance with the policy adopted by the board of public education. Such days shall not be included as a part of the required minimum of 180 days of pupil instruction.

History: En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405.

20-1-305. School holidays. (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

(a) New Year's Day (January 1);
(b) Memorial Day (last Monday in May);
(c) Independence Day (July 4);
(d) Labor Day (first Monday in September);
(e) Thanksgiving Day (fourth Thursday in November);
(f) Christmas Day (December 25);
(g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

20-1-306. Commemorative exercises on certain days. (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

(a) Lincoln's Birthday (February 12);
(b) Washington's Birthday (February 22);
(c) Arbor Day (last Friday in April);
(d) Flag Day (June 14);
(e) Citizenship Day (September 17);
(f) Columbus Day (October 12);
(g) Pioneer Day (November 1);
(h) Other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407.

20-1-307. Provisions of school code excepted. Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

20-1-308. Religious instruction released time program. (1) The trustees of an elementary or high school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for a period not to exceed 2 hours per week for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian.

(2) No religious instruction released time program may be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) No public moneys may be used, directly or indirectly, for such religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and such release may not adversely affect the pupil's attendance record.

History: En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1.

Part 4

Fire Drills and Safety Patrols

20-1-401. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1.

20-1-402. Number of fire drills required — avoiding severe cold weather. There shall be at least eight fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

History: **En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2.**

20-1-403. Times of drills to vary. Drills shall be executed at different hours of the day or evening, during the changing of classes, when the school is at assembly, during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: **En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.**

20-1-404. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: **En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4.**

20-1-405. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: **En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.**

20-1-406. Recall signal to be distinct — control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: **En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.**

20-1-407. Inspection of exits — cooperation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically, in order to make sure that all stairways, doors, and other exits are in proper condition, and cooperate with local fire department authorities in conducting fire drills.

History: **En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7.**

20-1-408. School safety patrols. (1) The trustees of any district or the administration of any private school may organize and supervise school safety patrols for a school under their authority. The purpose of school safety patrols is to influence and encourage other pupils of the school to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

(2) The school safety patrol shall be formed from the children of the school who are 9 years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

(3) No liability attaches to a member of the school safety patrol or parent or guardian by virtue of the organization, maintenance, or operation of such school safety patrol because of injury sustained by any pupil.

(4) Identification and operation of school safety patrols shall be uniform throughout the state, and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana division of motor vehicles.

(5) Any municipality, city, or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training out of any funds available for such purpose.

History: En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.

CHAPTER 2

STATE BOARDS AND COMMISSIONS

Part 1 — State Board of Education Board of Public Education—Board of Regents

Section
20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
Sections 20-2-102 through 20-2-110 reserved.
20-2-111. Officers of boards — quorum.
20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
20-2-113. Per diem of board members — expenses.
20-2-114. Adoption of rules — seal — record of proceedings.
Sections 20-2-115 through 20-2-120 reserved.
20-2-121. Board of public education — powers and duties.
20-2-122. Professional assistant and secretary to board of public education — term — compensation.
Sections 20-2-123 through 20-2-130 reserved.
20-2-131. Commissioner of higher education — duties — compensation — staff.

Parts 2 and 3 reserved

Part 4 — Commission on Federal Higher Education Programs

20-2-401. Definition.
20-2-402. Purpose.
20-2-403. Duties.

Part 1

State Board of Education — Board of Public Education — Board of Regents

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education on any two of the dates specified in 20-2-112(1).

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615.

20-2-102 through 20-2-110 reserved.

20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) The professional assistant shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The professional assistant shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education.

History: En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet quarterly at the same location on the second Monday of April, July, September, and December.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613.

20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents are entitled to $25 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614.

20-2-114. Adoption of rules — seal — record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.

20-2-115 through 20-2-120 reserved.

20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification, specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979.

Compiler's Comments

Effective date. Sec. 22, Ch. 598, L. 1979, provided: "This act is effective on passage and approval. Approved April 18, 1979."

20-2-122. Professional assistant and secretary to board of public education — term — compensation. The board of public education may:

(1) employ a professional assistant and employ a secretary to perform the duties required of it;

(2) prescribe the term, duties, and compensation of its professional assistant;

(3) provide office space for its professional assistant to carry out his duties.

History: En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2.

20-2-123 through 20-2-130 reserved.

20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set his compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3).

Parts 2 and 3 reserved

Part 4

Commission on Federal Higher Education Programs

20-2-401. Definition. Unless the context requires otherwise, in this part "commission" means the commission on federal higher education programs provided for in 2-15-1515.

History: En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

20-2-402. Purpose. It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

20-2-403. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P.L. 88-204, as amended by P.L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P.L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

CHAPTER 3

ELECTED OFFICIALS

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20-3-356. Membership of elected trustees of high school district operating county high school and nomination of candidates.
Sections 20-3-357 through 20-3-360 reserved.
20-3-361. Joint board of trustees organization and voting membership.
20-3-362. Powers of joint board of trustees.

Part 1

Superintendent of Public Instruction

20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of his election;

(b) has resided within the state for the 2 years next preceding his election;

(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and

(d) otherwise possesses the qualifications for such office which are required by The Constitution of the State of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702.

20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for the term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner prescribed by The Constitution of the State of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703.

20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction shall employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped and who has not less than 2 years' experience in special education.

History: (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979.

20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for vocational education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants as may be required to carry out the duties of his office.

History: En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979.

20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) whenever he deems necessary but not more than once every 4 years, cause the printing of a complete and updated volume of the school laws of the state which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) submit a written report to the governor of his activities during the immediately preceding fiscal biennium in accordance with the provisions of 2-7-102;

(8) if deemed necessary, publish a biennial report of the superintendent of public instruction, as prescribed by 2-7-102;

(9) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(10) call an annual meeting of the county superintendents when he deems it advisable;

(11) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(12) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706.

20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348;

(16) distribute state impact aid in accordance with the provisions of 20-9-304;

(17) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(18) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(19) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(20) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(21) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(22) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(23) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(24) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(25) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(26) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(27) as the governing agent and executive officer of the state of Montana for vocational education, adopt the policies prescribed by the in accordance with the provisions of 20-7-301;

(28) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(29) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(30) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(31) administer the traffic education program in accordance with the provisions of 20-7-502;

(32) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(33) review school building plans and specifications in accordance with the provisions of 20-6-622;

(34) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(35) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979; amd. Sec. 12, Ch. 598, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public

instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979.

20-3-108. Division of resources and assessment revolving fund. The superintendent of public instruction shall establish a revolving fund within the office of public instruction for the division of resources and assessment. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment revolving fund. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106(25).

History: En. Sec. 1, Ch. 436, L. 1979.

Part 2

County Superintendent of Schools

20-3-201. Election and qualifications. (1) A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has not less than 3 years of successful teaching experience.

(3) When the office of county superintendent of schools is consolidated with another county office within the county, the requirements of subsection (2) shall be waived. Unless the officeholder has the qualifications of subsection (2), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties required of county superintendents in counties where the office has not been consolidated.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979.

20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. He shall assume office on the first

Monday of January following his election and shall hold the office until his successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. Such replacement shall serve until the next regular general election, when a person shall be elected to serve the remainder of the initial term, if there be any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803.

20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent shall be paid from the county general fund all necessary traveling expenses that he actually incurs in discharging his duties, after such expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint such candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804.

20-3-204. Office hours. (1) The county superintendent of schools shall keep his office open from 8 a.m. until 5 p.m. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk, the office shall be kept open from 8 a.m. until 5 p.m. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

(2) This section shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part).

20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) quarterly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-9-351, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed.

History: (1) thru (23)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (24) thru (27)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979.

20-3-206. Additional positions. In his capacity as county superintendent, he also shall serve as:

(1) the chairman of the county transportation committee, as prescribed by 20-10-131;

(2) a member of the high school boundary commission of the county, as prescribed by 20-6-304;

(3) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(4) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806.

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

(1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;

(2) special visits to the schools on request of the trustees;

(3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;

(4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.

20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the utilization of such money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

History: En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979.

20-3-209. Annual report and receipt. (1) The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than September 1. Such report shall be completed on the forms supplied by the superintendent of public instruction which shall require the reporting of:

(a) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(b) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(5);

(c) the pupil information for each district provided the county superintendent under the provisions of 20-4-301(1)(d) or 20-4-402(7); and

(d) any other information that may be requested by the superintendent of public instruction which is within his authority prescribed by this title.

(2) When the superintendent of public instruction receives a complete annual report from the county superintendent, he shall immediately issue a receipt for the annual report to such county superintendent. The county superintendent shall present the receipt to the board of county commissioners, and if the county commissioners do not receive the receipt, they shall not pay the county superintendent's salary for the last 2 months of the calendar year until the receipt is presented to them.

History: En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809.

20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(4) Cost incurred by the office of the county superintendent shall be paid from the general fund budget of the county in which the controversy is initiated.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979.

20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) he is a party to or has an interest in the controversy;

(2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law; or

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent.

History: En. Sec. 1, Ch. 489, L. 1979.

20-3-212. The county superintendent to appoint another county superintendent. (1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

History: En. Sec. 2, Ch. 489, L. 1979.

Part 3

School District Trustees

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title shall be subject to election, and the term of office for each position shall be 3 years unless it is otherwise specifically prescribed by this title.

(2) The trustees shall be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(3) The number of trustee positions in a district shall vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

History: (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906.

20-3-302. Legislative intent to elect less than majority of trustees. (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there shall not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In high school districts operating a county high school, there shall not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(a) the creation of a new elementary district under the provisions of 20-6-217;

(b) the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203;

(c) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354;

(d) the change of a district's classification under the provisions of 20-6-201 and 20-6-301;

(e) the filling of a trustee position which has become vacant under the provisions of 20-3-308 or any other provision of law;

(f) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907.

20-3-303. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

20-3-304. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of Title 13 and this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-3-305. Candidate qualification and nomination. (1) Any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.

(2) Any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 20 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated.

History: En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913.

20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979.

20-3-307. Qualification and oath. (1) Any person who receives a certificate of election as a trustee under the provisions of 20-20-416 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by 20-3-309 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916.

20-3-308. Vacancy of trustee position. (1) Any elected trustee position shall be vacant whenever the incumbent:

(a) dies;

(b) resigns;

(c) moves his residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;

(d) is no longer a registered elector of the district under the provisions of 20-20-301;

(e) is absent from the district for 60 consecutive days;

(f) fails to attend three consecutive meetings of the trustees without a good excuse;

(g) has been removed under the provisions of 20-3-310; or

(h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position also shall be vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

History: En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917.

20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment. If the trustees do not make the appointment within such 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(2) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(3) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979.

20-3-310. Trustee removal. Any trustee may be removed from his trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are preferred against a trustee and good cause is shown, the board of county commissioners may suspend such trustee from his trustee position until the charges can be heard in the court of competent jurisdiction.

History: En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place shall be reimbursed at the rate as provided in 2-18-503, for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931.

20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, joint district dissolution, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts or by the creation of a new elementary district, shall continue to be the trustees of such district with the same powers, duties, and responsibilities and subject to the same limitations provided by law, as if there had been no boundary change. In the case of elementary district consolidation or the creation of a new elementary district, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-203 or 20-6-216, whichever is applicable.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531.

20-3-313 through 20-3-320 reserved.

20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of April. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

(2) The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such officer.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927.

20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a preliminary budget meeting, as prescribed by 20-9-113; and

(c) in first-class elementary districts, not less than one regular meeting per month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish; such meetings shall be conducted in school buildings or on other property belonging to the district.

(3) Special meetings of the trustees may be called by the chairman or any two members of the trustees by giving each member a 48-hour written notice of the meeting.

(4) No business shall be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting shall be a majority of the trustees' membership. All trustee meetings shall be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

History: En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930.

20-3-323. District policy and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

History: En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979.

20-3-324. *(Temporary)* **Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel part of this title;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, postsecondary vocational-technical center fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

20-3-324. *(Effective July 1, 1980)* **Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel part of this title;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 682, L. 1979, provided: "This act is effective on July 1, 1980."

20-3-325. Clerk of the district. As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of their members or a district employee act as clerk for the meeting and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(2) prepare the annual trustees' report required under the provisions of 20-9-213(5).

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935.

20-3-326 through 20-3-330 reserved.

20-3-331. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of 33-23-102 and 2-9-104 shall apply to the provisions of this section.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979.

20-3-332. Personal liability of trustees. The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941.

20-3-333. Agreements with Indians. The trustees of any district shall have the authority to enter into an agreement with the tribal council or other governing body of an Indian tribe or Indian reservation to perform any function prescribed by this title except as limited by the laws of the United States and its treaties with such Indian tribe.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

20-3-334 through 20-3-340 reserved.

20-3-341. Number of trustee positions in elementary districts. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There shall be seven trustee positions in a first-class elementary district.

(2) There shall be five trustee positions in a second-class elementary district.

(3) There shall be three trustee positions in a third-class elementary district; however, upon the majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election, provided that notice of such action of the board of trustees be published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of such trustee election.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1).

20-3-342. Determination of terms after creation or consolidation of elementary districts. Whenever the trustees are elected at one regular school election under the circumstances described in subsections

(2)(a) and (2)(b) of 20-3-302, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:

(1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;

(2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or

(3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

History: En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908.

20-3-343. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of such district under the circumstance described in 20-3-302(2)(d), the members who are elected shall draw by lot to determine their terms of office which shall be one for 3 years and one for 2 years.

History: En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910.

20-3-344. Nomination of candidates by petition in first-class elementary district. Any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in 20-3-306.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1.

20-3-345 through 20-3-350 reserved.

20-3-351. Number of trustee positions in high school districts. (1) The trustees of a high school district, except a high school district operating a county high school, shall be composed of:

(a) the trustees of the elementary district where the high school building is located or, if there is more than one elementary district where high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with 20-3-352.

(2) The trustees of a high school district operating a county high school shall be composed of seven trustee positions.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3).

20-3-352. Request and determination of number of high school district additional trustee positions. (1) As provided in 20-3-351(1)(b), each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of such additional trustee positions.

(2) A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district which has its trustees placed on the high school trustees shall be divided by the number of positions on the trustees of such elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) above shall be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) above shall be divided by the taxable valuation per trustee position calculated in subsection (2)(a) above. The resulting quotient shall be rounded off to the nearest whole number.

(3) The number determined in subsection (2)(c) above shall be the number of additional trustee positions, except that the number of additional trustee positions shall not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district which has its trustees placed on the high school district trustees. When this situation exists, three additional trustees shall be elected from the elementary school districts where the high school is not located and one additional trustee shall be elected at large in the high school district.

History: **En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903.**

20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, he shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There shall be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries shall be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district shall be to establish a representative district for the nomination and election of a resident of such district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions

of 20-20-301 and who reside in the trustee nominating district shall be the only electors who may vote for the additional trustee representing such district. They also shall be permitted to vote for a trustee position at large, if there is one, but for no other high school trustee position.

(3) Any additional trustee position established under the provisions of this section shall be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within it or there is a reclassification of the elementary district which has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon his order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions. (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office. Such terms of office by number of members elected shall be:

(a) two for 3 years, if four are elected;

(b) one for 3 years, if one, two, or three are elected;

(c) one for 2 years, if two, three, or four are elected; and

(d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and such terms shall be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909.

20-3-356. Membership of elected trustees of high school district operating county high school and nomination of candidates.

(1) The trustees of a high school district operating a county high school shall be composed of the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 shall govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924.

20-3-357 through 20-3-360 reserved.

20-3-361. Joint board of trustees organization and voting membership. (1) Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they may form a joint board of trustees for the purpose of coordinating the educational program of both districts. When a joint board of trustees is formed, all of the members of both districts' trustees shall be members of the joint board of trustees and each member shall have the right to participate in the meetings, but voting on matters considered by the joint board shall be limited by the provisions of this section.

(2) At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(3) The voting membership of the joint board of trustees shall be equalized between the trustee membership of the two participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(a) all of the membership of the elementary district trustees unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(b) the members of the high school district trustees who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the elementary district trustees as established under subsection (3)(a) above. The names of the voting membership selected by the high school trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the high school trustees.

(4) Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928.

20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505;

(d) prescribe and administer joint administrative policy; and

(e) prorate all items of joint expense between the elementary and high school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of either district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the two districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979.

CHAPTER 4

TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

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Part 1

Certification of Teaching and Supervisory Personnel

20-4-101. System of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(3) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979.

20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

20-4-104. Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is a citizen of the United States except as provided in 20-4-105.

(d) He is of good moral and professional character.

(e) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution in the United States of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(f) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America, The Constitution of the State of Montana, and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United

States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)(d) and the requirement for a specialist certificate provided in subsection (2) of 20-4-106.

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979.

20-4-105. Noncitizen teacher or specialist certification. (1) The superintendent of public instruction may issue a class 5 provisional certificate to a person who is not a citizen of the United States when:

(a) the trustees of a district request certification of such person; and

(b) he otherwise qualifies for at least a class 5 provisional certificate.

(2) The superintendent of public instruction also may issue an annual teacher or specialist certificate to a person who is not a citizen of the United States and who is an exchange teacher or specialist from a foreign country intending to return to that country.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is the holder of a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent adopted with HB 864 (Ch. 511, L. 1979) provided: "A statement of intent is required for House Bill No. 864 in that it delegates rulemaking and licensing authority to the Board of Public Education in Section 9.

The intent of this bill is to establish a certification category for non-teaching school personnel. It is not intended to restrict or authorize the practice of any profession outside of the public school system.

Specialist certificates may be developed in areas such as school psychology or school nursing.

Experience requirements for certification should range from 0 to 3 years depending upon the profession involved and the needs of the public schools. Education and training equivalencies may be considered for purposes of compliance with experience requirements.

Education and training standards should require no less than a bachelor's degree with some additional specialized training. Specialized training may include an appropriate internship or college-based training program.

The standards should require some degree of training or experience that is directly related to the practice of the profession in a school setting.

A state licensing board license may be made a Board of Education requirement for specialist certification."

20-4-107. Outstanding teacher certificates. (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal

of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

History: En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

20-4-108. Term of teacher and specialist certificates — renewal. (1) Any teacher or specialist certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on July 1 immediately preceding the date of issue.

(2) Teacher and specialist certificates shall be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979.

20-4-109. Fees for teacher and specialist certificates. Each person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee of $2 for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $2. Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the general fund.

History: En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979.

20-4-110. Suspension, revocation, and denial — appeals. (1) The board of public education shall have the power and authority to suspend or revoke the teacher or specialist certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher or specialist certificate to such person if it had been known at the time such certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction in this state or any other state or country of a criminal offense involving moral turpitude;

(f) substantial and material nonperformance of the employment contract between the teacher or specialist and the trustees of a district without good cause or the written consent of the trustees; or

(g) denial, revocation, suspension, or surrender of a teacher or specialist certificate in another state for any reason constituting grounds for such action in this state.

(2) The board shall initiate proceedings under this section if, and only if, a request for the suspension or revocation of the teacher or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher or specialist employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction as to a teacher or specialist not employed by any district within the 12 months immediately preceding receipt of the request by the board.

(3) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.

(4) After a full investigation and proper hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(f) above, the maximum penalty shall not be more than a 2-year suspension of the person's certificate.

(5) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate to a person, he may appeal the denial to the board of public education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 240 and Ch. 511, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Since Ch. 240 and Ch. 511 did not conflict conceptually, additions were made to incorporate the concepts of both chapters.

20-4-111. Emergency authorization of employment. (1) Any district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when such district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during such emergency. Such emergency authorization of employment shall indicate:

(a) the district to which such authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and

(d) the school fiscal year for which such emergency authorization of employment is given.

(2) Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of public education policies. A fee of $2 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for such person, a filing fee of $2 shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979.

20-4-112 through 20-4-120 reserved.

20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: **En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012.**

20-4-122. Designated official for purposes of interstate agreement. The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: **En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.**

20-4-123. Preservation and publication of contracts made pursuant to interstate agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: **En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.**

Part 2

Teacher Employment — Tenure — Indian Studies

20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district shall have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) No contract of employment with a teacher or specialist shall require such teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. Any teacher's or specialist's contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher or specialist.

(3) Whenever the trustees of a county high school and the trustees of the elementary district where the county high school is located form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher or specialist who shall serve both districts. When such a contract is executed, the two districts shall prorate the compensation provided by such contract on the basis

of the total number of instructional hours expended by such teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979.

20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher or specialist does not register his certificate with the county superintendent within 60 calendar days after he begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979.

20-4-203. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, unless:

(1) the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204; or

(2) the teacher will attain the age of 65 years before the ensuing September 1 and the trustees have notified the teacher in writing by April 1 that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his 70th birthday.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979.

20-4-204. Termination of tenure teacher services. (1) Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of 20-4-203(1), they shall, before April 1, notify such teacher of such termination in writing by certified or registered letter or by personal notification for which a signed receipt is returned. Such notification shall include a printed copy of this section for the teacher's information.

(2) Any tenure teacher who receives a notice of termination may request, in writing 10 days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within 10 days after the request.

(3) Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(4) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104.

20-4-205. Notification of tenure teacher reelection — acceptance. (1) The trustees shall provide written notice by April 1 to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any tenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection, and failure to so notify the trustees within 20 days shall constitute conclusive evidence of his nonacceptance of the tendered position.

History: En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105.

20-4-206. Notification of nontenure teacher reelection — acceptance — termination and statement of reason. (1) The trustees shall provide written notice by April 15 to all nontenure teachers who have been reelected. Any nontenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of

employment. Within 10 days after receipt of the request, the trustees shall furnish such statement to the teacher.

(4) The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

History: **En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1.**

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal.

History: **En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107.**

20-4-208 through 20-4-210 reserved.

20-4-211. Definitions. (1) As used in 20-4-211 through 20-4-214, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in 20-4-211 through 20-4-214, "instruction" means:

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts; or

(c) in-service training provided by a local board of trustees, which is developed and conducted in cooperation with local Indian people.

History: **En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.**

20-4-212. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of 20-4-211 through 20-4-214, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: **En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.**

20-4-213. Qualification in Indian studies — trustees and noncertified personnel. (1) Any board of trustees for an elementary or secondary public school district on or for a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualifies the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211. This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211.

History: En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 458, L. 1979, provided: "This act is effective on passage and approval." Approved April 2, 1979.

20-4-214. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in 20-4-213 and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of 20-4-211 through 20-4-214.

History: En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

Part 3

Teachers' Powers, Duties, and Privileges

20-4-301. Duties of teacher — nonpayment for failure to comply. (1) Any teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and the policies of the trustees of the district;

(b) utilize the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;

(d) immediately after the conclusion of each school instructional year and before July 10 prepare an annual report in the manner and on the forms prescribed by the superintendent of public instruction which shall include the pupil attendance and absence data from his teacher's register that is necessary to calculate ANB, and such report shall be submitted to:

(i) the district superintendent, if there be one;

(ii) the principal of the school, if there be one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal;

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees shall be authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsections (1)(a) or (1)(b) above until such teacher does comply with such provisions.

(3) The trustees shall not pay any teacher his last month's salary until he has provided a complete and accurate annual report to the required person, as determined by such person and as required in subsection (1)(d) of this section.

History: En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108.

20-4-302. Power of teacher or principal over pupils — undue punishment. (1) Any teacher or principal shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a principal shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the principal's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, principal, or of the authority of the school, the teacher or principal may administer corporal punishment without giving such notice.

(2) Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause and to administer corporal punishment in the presence of a witness, without undue anger. Where a district superintendent or principal is employed, only he shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action and the trustees shall meet as soon as practicable to consider the suspension action of the teacher.

(3) It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

(4) Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than $25 or more than $500.

History: **En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.**

20-4-304. Attendance at state teachers' association annual session. When the trustees of a school district close the schools of the district for the annual session of the state teachers' association, a teacher may attend the annual session without loss of salary or work at his school and perform duties related to his position of employment, as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he shall not be paid.

History: **En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111.**

Part 4

District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

(3) The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than 3 years, and after the second successive contract, the contract shall be deemed to be renewed for a further term of 1 year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than February 1 of the last year of such contract.

(4) Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall

prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(5) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

(6) No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: **En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112.**

20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal shall be the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit such selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit such selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause any pupil of the district until the trustees may consider such suspension;

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent or county superintendents when reporting for a joint district, immediately after the conclusion of the school instructional year and before July 10; and

(8) perform any other duties in connection with the district as the trustees may prescribe.

History: **En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113.**

20-4-403. Duties of principal. Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

History: **En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114.**

CHAPTER 5

PUPILS

Part 1 — Attendance

Section
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Part 3 — Attendance Outside School District

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Part 1

Attendance

20-5-101. *(Temporary)* **Admittance of child to school.** (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) In complying with subsection (1)(a) above, the trustees shall have the authority to establish reasonable age requirements for entry into the 1st grade so long as an otherwise qualified child is permitted to enter the 1st grade sometime during his seventh year or earlier.

(3) The trustees may, at their discretion, assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older.

(4) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

20-5-101. *(Effective July 1, 1980)* **Admittance of child to school.** (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) (a) The trustees of any district shall be empowered to admit a child who does not meet the age requirements if in their judgment there are exceptional circumstances which merit waiving the age provision of this section.

(b) The trustees may, at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older.

History: En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 334, L. 1979, provided: "This act is effective on July 1, 1980." Chapter 334 amended subsection (1)(a) and added subsection (3)(a).

Composite section. This section was amended by Ch. 334 and Ch. 558, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsections (3)(a) and (3)(b) represent apparently conflicting provisions enacted by the above chapters.

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) Such parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the

school term or when he establishes residence in the district unless the child is:

(a) enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to 20-7-111;

(b) enrolled in a school of another district or state under any of the tuition provisions of this title;

(c) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(d) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;

(e) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child; or

(f) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school.

(3) The excuse provided for in subsection (2)(d) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979.

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979.

20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first and second class shall employ and appoint one or more attendance officers;

(2) districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer; or

(3) the county superintendent shall be the attendance officer in third-class districts that do not appoint an attendance officer.

History: **En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305.**

20-5-105. Attendance officer — powers and duties. The attendance officer of any district shall:

(1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;

(3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and

(6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: **En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.**

20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than $5 or more than $20. In the alternative, he may be required to give bond in the penal sum of $100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: **En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.**

20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child shall be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308.

20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

Part 2

Duties — Suspension and Expulsion

20-5-201. Duties and sanctions. (1) Any pupil shall:

(a) comply with the policies of the trustees and the rules of the school which he attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while he is in school or on school premises, on his way to and from school, or during his intermission or recess.

(2) Any pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or his property shall be liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, as defined above, his parent or guardian shall be liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of such damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating

in school activities. Such action shall not be taken until the incident or infraction causing such consideration has been investigated and the trustees have determined that the high school pupil was involved in such incident or infraction.

History: **En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310.**

20-5-202. Suspension and expulsion. As provided in 20-4-302 and 20-4-402, any pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees.

History: **En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311.**

20-5-203. Secret organization prohibited. (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $5 or more than $25 for each violation.

History: **En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.**

Part 3

Attendance Outside School District

20-5-301. Elementary tuition with mandatory approval. (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school; or

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed child care institution which is approved by the department of social and rehabilitation services and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence does not apply.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application.

History: **En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313.**

20-5-302. Elementary tuition with discretionary approval. In considering the approval of a tuition application that is not required to be approved under the provisions of 20-5-301, the tuition approval agents prescribed in 20-5-301 may approve such application when such approval agents, individually, determine that the tuition agreement should be approved because of:

(1) the distance and road conditions between the child's residence and any school of his resident district;

(2) the trading center of the child's parents;

(3) an opportunity to live with his relatives;

(4) dormitory facilities in the district to be attended;

(5) the living conditions of the child's family;

(6) the availability of transportation; or

(7) the type of educational program available in the school to be attended.

History: En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

20-5-303. Individual tuition for elementary pupil. No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. However, under this section, tuition shall be waived when the parent of the child paid $200 or more in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320.

20-5-304. Distances, notification, and appeal for elementary tuition purposes. (1) In considering any approval of an application submitted under the provisions of 20-5-301 or 20-5-302, the approval agents shall determine mileage distances on the basis of the shortest practical route between the child's residence and the school building, and they shall determine the child's residence on the basis of the provisions of 1-1-215.

(2) The county superintendent shall notify the parent or guardian and the trustees of the districts involved in the tuition application of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by any approval agent, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

(3) The rate of tuition and the budgeting and payment procedure prescribed in 20-5-305 shall be applicable to any tuition application approved under the provisions of this section.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

20-5-305. Elementary tuition rates. Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of 20-5-301 or 20-5-302, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the rate of tuition determined by the attended district. The rate of tuition shall be determined by:

(1) totaling the actual expenditures from the district general fund, retirement fund, and debt service fund;

(2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(3) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201.

20-5-306. End-of-term tuition report and notification of resident elementary district. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of each elementary district shall report to the county superintendent:

(a) the names of the pupils attending the schools of the district under an approved tuition agreement with the district of residence of each pupil;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive (any waiver of tuition shall be applied equally to all pupils); and

(d) the rate of the current school fiscal year tuition, as determined under the provisions of 20-5-305.

(2) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such amounts shall be established from the tuition rate and other information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than 40 days of school in such district.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

20-5-307. Budgeting, levy requirement, and paying elementary tuition. (1) The tuition amount that has been established in 20-5-305 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county

superintendent's notification provided under the provisions of 20-5-305. Such payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget was adopted.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203.

20-5-308 through 20-5-310 reserved.

20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the trustees of the child's district of residence before permission to enroll in and attend a school outside of the district under the provisions of this section shall be granted.

(2) The trustees shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence. In approving such a tuition application the trustees are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the trustees may require the child to attend the high school closest to his residence. The trustees may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and he trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the trustees, the parent may appeal such disapproval to the trustees for their reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979.

20-5-312. Reporting, budgeting, and payment for high school tuition. (1) At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, retirement fund, and debt service fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(3) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(4) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(5) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(6) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the

second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979.

20-5-313. Individual tuition for high school pupil. (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979.

20-5-314. Reciprocal tuition agreement with adjoining state. (1) The superintendent of public instruction shall have the authority to execute a reciprocal tuition agreement with the superintendent of public instruction or a department of education of any state adjoining Montana to allow the eligible children of Montana to attend school in the adjoining state and to allow children of the adjoining state to attend school in Montana. In negotiating a reciprocal tuition agreement, the tuition rates prescribed by 20-5-305 and 20-5-312 shall be waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal tuition agreement that is executed to the county superintendent of each county that may be affected by such agreement.

(2) Any tuition agreement approved under the provisions of 20-5-301, 20-5-302, or 20-5-311 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318.

20-5-315. High school tuition for public institution at Twin Bridges. Whenever high school pupils are inmates of the Montana children's center at Twin Bridges and attend high school in Twin Bridges, the superintendent of public instruction shall pay $500 per pupil for each pupil who has attended 40 or more days of school in such district. The annual payment shall be made from the state equalization aid account to the county treasurer for the credit of the Twin Bridges high school general fund immediately after the end of the school fiscal year of attendance and after the verification of the claim submitted by Twin Bridges high school district. An approved tuition agreement shall not be required under this section.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.

Part 4

Health

20-5-401.*(Temporary)* **Immunization.** (1) The trustees of each district may require that all children, at the time they are first enrolled in school or within a reasonable time thereafter, be successfully immunized against those communicable diseases as recommended by the department of health and environmental sciences.

(2) The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice and shall be set by the department of health and environmental sciences.

(3) A child may be exempted from this requirement upon certification from a licensed physician stating that the physical condition of the child is such that the immunization would seriously endanger his life or health or a written statement signed by one parent or guardian that he is an adherent of a religious denomination whose religious teachings are opposed to the immunization. **(Repealed effective August 1, 1980; Sec. 13, Ch. 147, L. 1979)**

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).

20-5-402. Definitions. For the purposes of this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health officer or department" means a city, city-county, county, or district health officer or department.

(5) "School" means an institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12.

History: En. Sec. 1, Ch. 147, L. 1979.

Compiler's Comments

Severability. Sec. 10, Ch. 147, L. 1979, provided a severability clause.

Codification. Sec. 11, Ch. 147, L. 1979, provided: "The code commissioner shall codify this act as an integral part of Title 20, and the provisions of Title 20 apply to this act."

Applicability. Sec. 12, Ch. 147, L. 1979, provided: "Sections 1 through 5 and sections 7 through 9 apply after August 1, 1980."

20-5-403. Immunization required. (1) A governing authority may not enroll any person as a pupil in any school unless, prior to enrollment, the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional enrollment; or

(c) files for an exemption.

(2) Failure to act as provided in subsection (1) in a reasonable period of time, as determined by the board of trustees, is an exemption on the grounds provided in 20-5-405(1).

History: En. Sec. 2, Ch. 147, L. 1979.

20-5-404. Conditional enrollment. A person who has not been immunized against each disease listed in 20-5-403 may be enrolled by the governing authority on condition that he has received one or more doses of polio, measles (rubeola), rubella, diphtheria, pertussis, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older.

History: En. Sec. 3, Ch. 147, L. 1979.

20-5-405. Personal, religious, or medical exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking enrollment may not be required prior to enrollment in any school. The statement must be maintained as part of the person's immunization records.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking enrollment or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease. The exclusion period may not exceed 30 calendar days.

History: En. Sec. 4, Ch. 147, L. 1979.

20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

History: **En. Sec. 5, Ch. 147, L. 1979.**

20-5-407. Rulemaking. The department may adopt rules necessary to implement the provisions of this part.

History: **En. Sec. 6, Ch. 147, L. 1979.**

20-5-408. Enforcement. (1) The governing authority of any school shall prohibit from further attendance any pupil enrolled conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

History: **En. Sec. 7, Ch. 147, L. 1979.**

20-5-409. Failure to immunize or claim exemption — injunction. (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

History: **En. Sec. 8, Ch. 147, L. 1979.**

20-5-410. Civil penalty. (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed $500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

History: **En. Sec. 9, Ch. 147, L. 1979.**

CHAPTER 6

SCHOOL DISTRICTS

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Part 1

School Districts — General Provisions

20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system.

(3) An elementary district shall be known as "District No. ...., ... County" and a high school district, except a high school district where a county high school is operated, shall be known as "High School District No. ...., ... County". Any district shall be a body corporate and, as such body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts shall have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts shall be considered a high school district under this title and the trustees of the elementary district shall be the trustees of the high school district. Such an elementary district operating a high school shall not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.

(5) As used in this title, unless the context clearly indicates otherwise, a county high school shall be considered a high school district subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school shall be:

(a) the high school district boundaries established by the county high school boundary commission; or

(b) if no such boundaries have been established, the county boundaries, except for any territory located in a joint high school district.

(6) Any county high school recognized as a high school district under the provisions of subsection (5)(b) above shall not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451.

History: **En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501.**

20-6-102. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

History: **En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.**

20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record which plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in his office and shall be responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, he shall change, harmonize, and describe them accurately, and he shall make a report of such boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, such boundaries shall be the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: **En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504.**

Part 2

Elementary School Districts

20-6-201. Elementary district classification. (1) Each elementary district shall have a classification of:

(a) first class, if it has a population of 6,500 or more;

(b) second class, if it has a population of 1,000 or more but less than 6,500; or

(c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

History: **En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part).**

20-6-202. Time limitation for boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of January and the second Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or

(3) two or more districts are consolidated in their entirety.

History: En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505.

20-6-203. District consolidation. Any two or more elementary districts in one county may consolidate to organize an elementary district. The consolidation shall be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation shall be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of an elementary district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their resident district.

(3) When the county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each elementary district included in the consolidation proposition to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-206; or

(b) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-207.

(5) After the county superintendent has received the election certification under the provisions of 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the last election certificate, order the consolidation of such districts. If it be for consolidation with the mutual assumption of bonded indebtedness of each elementary district by all districts included in the consolidation order, such order shall specify that all the taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In

addition, such order shall specify the number of the consolidated elementary district and shall contain the county superintendent's appointment of the trustees for the consolidated district who shall serve until a successor is elected at the next succeeding regular school election and qualified. The superintendent shall send a copy of such order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts shall fail, and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.

20-6-204. Conditions for elementary district annexation. (1) An elementary district may be annexed to another elementary district located in the same county when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, a first-class district, or a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) The annexation of elementary districts shall be conducted under the provisions of 20-6-205.

History: En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.

20-6-205. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of 20-6-204 is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation shall be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent shall first receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent has received authorization from the annexing district, he shall, within 10 days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-206; or

(b) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-207.

(6) After the county superintendent has received the election certificate from the trustees of the district conducting the annexation election under the provisions of 20-20-416 and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the elementary district voting on such proposition to the elementary district that has authorized the annexation to its territory. Such order shall be issued within 10 days after the receipt of the election certificate and, if it be for annexation with the assumption of bonded indebtedness, shall specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it shall fail and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.

20-6-206. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedure, if the proposition has been approved:

(a) determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by 20-9-428; and

(b) when the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.

20-6-207. Consolidation or annexation election without assumption of bonded indebtedness. (1) A consolidation election without the assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election without the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition shall be approved by a district if a majority of those voting in a district approve the proposition, otherwise it shall be disapproved.

(3) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition shall be approved by a district if a majority of those voting approve the proposition, otherwise it shall be disapproved.

History: En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.

20-6-208. District consolidation of two or more counties to organize joint elementary district. Any two or more elementary districts located in more than one county and whose territory is contiguous may consolidate to organize a joint elementary district. When a joint district consolidation proposition is to be introduced and considered in two or more districts, the consolidation procedure for elementary district consolidation without the assumption of bonded indebtedness prescribed in 20-6-203 and 20-6-207 shall be used except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county, and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-203.

History: En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of such district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the county superintendent or the superintendent of public instruction under the provisions of 20-9-804; or

(b) there is an insufficient number of residents who are qualified electors of the district that can and will serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the county superintendent or the superintendent of public instruction as provided under the provisions of 20-9-804 during the ensuing school fiscal year shall constitute grounds for abandonment of such district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide such notification shall not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a) above.

(3) Any abandonment under subsection (1)(a) shall become effective on July 1. Any abandonment of an elementary district under subsection (1)(b) shall become effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979.

20-6-210. Joint elementary district abandonment. (1) Any joint elementary district shall be abandoned for the reasons prescribed in 20-6-209 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The boards of trustees designated by 20-9-151 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

(2) After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which territory has a taxable value of $75,000 or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

(3) Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of 20-6-209(1)(a) shall become effective on July 1.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

20-6-211. Joint elementary district dissolution. (1) Any joint elementary district may be dissolved. A proposition to dissolve a joint elementary district shall be introduced by a petition signed by a majority of the electors, qualified under the provisions of 20-20-301, who reside in the territory of the joint district that is located within one county. Such petition shall be addressed and presented to the county superintendent of the county of residence of the petitioners.

(2) Whenever a county superintendent receives a valid petition for the dissolution of a joint elementary district, he shall immediately notify the county superintendents of all the other counties with territory located in the joint district. The county superintendents jointly shall, within 10 days after the receipt of the petition and as provided by 20-20-201, order the trustees of the joint district to call an election. The trustees shall call and conduct, at the same time, separate elections in each portion of the joint district that is located in a separate county. Such elections shall be called and conducted in the manner prescribed in this title for school elections and shall be considered as if each were an election in a separate district. An elector who may vote at a joint district dissolution election shall be qualified to vote under the provisions of 20-20-301. The election judges for each separate election in the joint district shall send the election certificate to the county superintendent of the county in which they serve.

(3) After the receipt of the election certificates, the county superintendents shall jointly determine the result of such election on the following basis:

(a) if a majority of all the joint district electors voting at each election conducted in the joint district are in favor of the dissolution of the joint district, the dissolution of the joint elementary district shall be approved;

(b) if two-thirds of the electors voting at one of the elections conducted in a county's portion of the joint district vote in favor of the joint district dissolution, the dissolution of that portion of such joint district may be approved if all the county superintendents involved in such dissolution proposition agree that such dissolution will not place an undue hardship on any other county's portion of the joint district and there is no good and sufficient reason why such dissolution should not be made; or

(c) if the conditions of either subsection (a) or (b) cannot be satisfied, the dissolution of the joint district shall be disapproved.

(4) The county superintendents shall jointly order the joint elementary district dissolution if the proposition is approved and, whether it has been approved or disapproved, shall jointly notify the joint district of the result. The dissolution of a joint district shall become effective on the first day of the ensuing school fiscal year.

(5) When the dissolution of a joint elementary district has been approved and ordered under subsection (3)(a) above, the county superintendent of each county shall individually order the attachment of the territory of the dissolved joint elementary district within his county to a contiguous elementary district within his county except when a school is operated in such territory, in which case the territory shall operate as a separate elementary district of the county.

(6) When the dissolution of a joint elementary district has been approved and ordered under the provisions of subsection (3)(b) above, the county superintendent of the county where the dissolved portion of the joint elementary district is located shall attach such territory to a contiguous elementary district within his county.

(7) In the event a dissolution proposition is disapproved, no subsequent joint elementary district dissolution election shall be held within 3 years thereafter.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

20-6-212. Boundary change of licensed child care institution elementary district. The boundaries of any elementary district created under the provisions of Chapter 105, Laws of 1965, shall be changed by the acquisition of any land contiguous to the district by the licensed child care institution for which such district was created. The boundaries shall be changed to include the additional acquired land in the district.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

20-6-213. Transfer of territory from one elementary district to another. (1) A majority of the electors of any elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in territory which is a part of an elementary district may petition the county superintendent to transfer such territory to another elementary district when:

(a) such territory is contiguous to the district to which it is to be attached;

(b) such territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of such territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land; and

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

(b) state the reasons why such transfer is requested; and

(c) state the number of elementary school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the county superintendent considers it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final 30 days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final 30 days after its date unless a petition to submit the question to a vote of the people in the district

from which the land is to be transferred, which has been signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under 20-20-301, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land shall be transferred to another district shall be put before the voters at the next regular school election in the affected district.

(5) Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners shall be performed jointly by such county officials.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979.

20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools who, upon receiving such a resolution, shall proceed as set forth in 20-6-213.

History: En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1.

20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under 20-6-213. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2.

20-6-216. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is $75,000 or more, except that when 50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be $100,000 or more after the territory is detached; and

(3) the ANB in any of the existing districts is not reduced to less than 15.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517.

20-6-217. Procedure for creation of new elementary district. (1) The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 10 children between the ages of 6 and 16 years who reside in the territory that would be included in the new district and who reside more than 3 miles over the shortest practical route from an operating school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of such petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent shall deem it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the request.

(4) Either of the county superintendent's orders may be appealed to the board of county commissioners within 30 days after the date of such order. Such appeal shall be in writing, signed by not less than three resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

(5) When a new elementary district is created, the county superintendent shall appoint the trustees of the new district, giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

(6) The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void, and the new district shall cease to exist, if such district does not open and operate a school within 8 months after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be reincorporated in the district or districts in which it was located before the creation of such new district and the trustees shall thereafter be without capacity to act.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518.

Part 3

High School Districts

20-6-301. High school district classification. The classification of a high school district shall be the same as the classification of the elementary district (20-6-201) where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent, and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part).

20-6-302. Methods of changing high school district boundaries. (1) The trustees of any high school district, except the trustees of a high school located in a county which has not been divided into high school districts or become a high school district by county high school unification, may request a change of the high school boundaries of their district or county as provided by this section.

(2) Whenever the trustees of a high school district shall pass a resolution requesting the change of their district's boundary or the redivision of the county into high school districts, they shall send such resolution to the county superintendent. When the trustees request a boundary change of their district or a redivision of the county into high school districts, they shall describe the requested boundary change or redivision and give the reasons therefor. A requested boundary change of a district shall conform to one of the following types:

(a) consolidation of high school districts shall be the merging of two or more high school districts to form a single high school district;

(b) annexation shall be the attachment of all the territory of a high school district to another high school district or districts;

(c) transfer of territory shall be the detachment of territory from a high school district and the attachment of such territory to another high school district or districts; or

(d) creation of a new high school district shall be the formation of a new high school district from the territory presently incorporated in the requesting high school district.

(3) Whenever the trustees of any high school district request a boundary change or a redivision that would create a joint high school district or in any way affect the boundary of an existing joint high school district, they shall send the boundary change resolution to the county superintendent of each county that would be affected by such boundary change.

History: **En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.**

20-6-303. Establishment of high school districts in a county. The trustees of a high school district located in a county which has not been divided into high school districts or become a high school district by county high school unification may request the division of the county into a high school district or districts. The request shall be sent to the county superintendent.

History: **En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.**

20-6-304. High school boundary commission — procedure for boundary change, division, or redivision. (1) Each county of the state of Montana shall have a high school boundary commission consisting of the board of county commissioners and the county superintendent. Whenever a county superintendent receives a resolution from the trustees of any high school district requesting a boundary change or a request to divide or redivide the county into high school districts, he shall immediately notify the high school boundary commission. Such commission shall set a time, date, and place for a public hearing on the request. The hearing shall be set for a date within 60 days after the receipt of the request, and any interested person may appear and be heard on such request. The county superintendent shall send a written notice of the public hearing on a requested boundary change, division, or redivision to the trustees of each elementary and high school district of the county which has territory that would be affected by the change. The county superintendent shall also give notice of such public hearing in accordance with the requirement for school election notices prescribed by school election provisions of this title. The certificate of the county superintendent filed with the high school boundary commission reciting that such notice requirements have been satisfied shall be conclusive.

(2) In considering a request to change high school district boundaries or to divide or redivide the county into high school districts, the high school boundary commission shall give primary consideration to the convenience of the high school pupils of the territory under consideration. Such commission also shall consider the grouping of elementary districts to be encompassed by a high school district or districts and shall group contiguous elementary districts within a high school district unless obstacles of travel, such as mountains, rivers, impractical routes of travel, or distance, make such grouping impractical. After the hearing, the high school boundary commission may

grant or deny any request made under the provisions of 20-6-302 for a high school district boundary change but shall order the division of the county into high school districts whenever requested under the provisions of 20-6-303. In the latter case the commission's discretion shall extend only to the establishing of boundaries for the newly created high school district or districts.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521.

20-6-305. Approval of high school district boundary when elementary district territory divided by commission. If the order of a high school boundary commission would divide the territory of any elementary district between two or more high school districts or would divide the territory of a joint elementary district which is located within the county between high school districts, the county superintendent shall, under the provisions of 20-20-201, order the trustees of such elementary district to call an election. The election shall be called and conducted in the manner prescribed in this title for school elections. An elector who may vote on the proposition shall be qualified under the provisions of 20-20-301. If the election is required because of the division of the territory of a joint elementary district located in the county, the electors shall be residents of such territory. If a majority of the electors voting at such election approve the division of the elementary district or the county's territory in a joint elementary district, the order of the high school boundary commission shall be approved. If a majority of the electors voting at such election do not approve such division, the high school boundary commission shall reconsider its action and shall establish different high school boundary lines, subject to the same limitations herein described.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

20-6-306. Counterproposed high school district boundaries by electors and election. (1) Whenever a high school boundary commission issues an order to change high school district boundary lines, 20% or more of the electors of any elementary district with territory affected by the high school boundary change who are qualified to vote under 20-20-301 may protest the boundaries established by the order of the commission within 30 days after the date of the order. The protest shall be in the form of a petition addressed to the county superintendent and shall provide a counterproposition to the new high school boundaries established by the order of the commission for the disposition of the territory of the elementary district for high school districting purposes. The provisions of this section shall not be used in elementary districts that have approved high school boundaries under 20-6-305.

(2) When the county superintendent receives a valid petition from an elementary district, he shall, within 10 days after the receipt of the petition, order the trustees of the elementary district to call an election to consider the high school boundary counterproposition described in the petition. The trustees shall call and conduct the election in the manner prescribed in this title for school elections. An elector who may vote on the proposition shall be qualified to vote under 20-20-301. If a majority of the electors voting at the election approve the counterproposition, the high school boundaries

described by the counterproposition shall be approved and the order of the high school boundary commission shall be amended to establish such high school boundaries. If a majority of the electors voting at the election disapprove the counterproposition, the order of the high school boundary commission shall be confirmed and shall be final.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county.

History: En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524.

20-6-308. Limitations for organization of joint high school district. The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or

(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525.

20-6-309. Procedure for organization of joint high school district. The high school district boundary changes permitted under 20-6-308 shall be made according to the following procedure:

(1) A majority of the electors of a joint elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in a county where the elementary school is not located may petition the county superintendent of their resident county to transfer the territory of the joint elementary district where they reside to establish a joint high school district. Such petition also shall state the reasons for requesting such a boundary change and the number of high school pupils residing in the territory.

(2) When the county superintendent receives a valid petition requesting the establishment of a joint high school district, he shall set a time, date, and place for a public hearing on the request which is not more than 40 days after the receipt of the petition. He shall give notice of such hearing in accordance with the election requirements for school election notices prescribed by school election provisions of this title. The county superintendent shall also notify the county superintendent of the county where the high school is located and the trustees of the high school district.

(3) The county superintendent shall hear the request to change the high school district boundaries at the place, time, and date set for the hearing, and any interested person may appear and be heard on the request. If the county superintendent deems it advisable and in the best interests of the residents of the territory to be transferred, he shall grant the petitioned request and order the change of high school boundaries to establish a joint high school district. Otherwise, he shall, by order, deny the request.

(4) If the county superintendent orders the establishment of a joint high school district, he shall immediately send the order to the county superintendent of the county where the high school is located. If the county superintendent of such county approves the order, he shall send such order to the trustees of the high school district. If the trustees approve the order, the boundary change shall become effective. Without the approval of such county superintendent and trustees, the boundary change shall fail.

(5) At any time within 30 days after the date of the county superintendent's order to grant or deny the request to establish a joint high school district, an appeal may be made to the board of county commissioners of the county in which the petition originated. The board of county commissioners shall conduct a hearing for the appeal, and their decision shall be final, subject to the approvals required by subsection (4).

History: En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.

20-6-310. Consolidation of high school districts by county commissioners. The board of county commissioners of any county shall have the authority to consolidate any two or more high school districts of the county whenever it appears to them that it would be for the best interest of the pupils and other residents of the districts and the county. The board of county commissioners shall have complete responsibility and authority to determine all questions involved in effecting the consolidation of the high school districts, except that before it shall become effective any such boundary change shall be approved by the superintendent of public instruction.

History: En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.

20-6-311. High school district boundary approval by superintendent. Whenever a high school boundary commission orders changes in high school district boundaries or a division or redivision of the county under the provisions of this title, its order shall not be final until it has been approved by the superintendent of public instruction. The superintendent of public instruction shall not approve any high school boundary commission order that:

(1) is dated less than 1 year since the last high school boundary commission order was approved for such county;

(2) has not been confirmed by the high school boundary commission of each county affected by the boundary change when it involves a joint high school district; or

(3) does not provide for the high school district boundaries approved by the electors of an elementary district under the provisions of 20-6-305 or 20-6-306.

History: En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528.

20-6-312. County high school unification. (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county. The territory of an existing joint high school district shall remain a part of such joint high school district. The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located shall be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the county or, if the county has been divided into high school districts, the electors of the high school district where the county high school is located, and who are qualified to vote under the provisions of 20-20-301, petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, he shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition shall be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition shall be substantially in the following form:

"OFFICIAL BALLOT
COUNTY HIGH SCHOOL UNIFICATION
ELECTION

Shall .... County High School be unified with District No. ...., ... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.
☐ AGAINST the unification of the county high school."

(4) When the county superintendent receives the election certificate from the trustees of the county high school, he shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next succeeding July 1, if a majority of those electors voting at such election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, he shall order the disapproval of the unification proposition.

History: En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538.

20-6-313. Transactions after approved county high school unification. (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions shall be completed on or before the July 1 when the unification becomes effective:

(a) The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts.

(b) The county high school trustees, who shall not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(c) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes such areas, he shall appoint additional high school district trustees from each area who shall hold office until a successor is elected at the next regular school election and qualified.

(d) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district shall be responsible for the maintenance of the debt service fund for such bonds. It shall be the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539.

Part 4

School District Reorganization

20-6-401. Definitions. As used in this part, unless the context clearly indicates otherwise the following definitions apply:

(1) "Component districts" are the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" shall be the average number belonging for the current school year in the operating schools of the component districts and the

tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils shall be ineligible for bonus payment consideration.

(3) "Enlarged district" is the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" shall be $100 per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. Such payment shall be made from the state school equalization aid account.

(5) "Transportation bonus payment" will be the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district shall be entitled to the transportation bonus payment for such eligible pupil for a period of 3 years. Such payment shall be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔% state financing of the on-schedule amount for this payment shall be prorated to provide such financing for the eligible pupil.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541.

20-6-402. Voluntary consolidation and annexation incentive plan. Sections 20-6-401 through 20-6-408 shall be known as the voluntary consolidation and annexation incentive plan. The purpose of this plan is to provide additional financial assistance to school districts that consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 for elementary school districts or 20-6-304 for high school districts.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540.

20-6-403. Application for bonus payment. Whenever two or more elementary school districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 or two or more high school districts consolidate under the provisions of 20-6-304, the enlarged district may make application for the bonus payment as provided herein if such consolidation or annexation shall result in the dissolution of at least one elementary or high school district. Application for the bonus payments must be made during the school year of the order creating the enlarged school district.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542.

20-6-404. Application to superintendent of public instruction. Application for the bonus payments shall be made to the superintendent of public instruction and shall include a copy of the order issued by the proper officials creating such enlarged school district, the number of eligible pupils as defined herein, and any other information the superintendent of public instruction may deem necessary.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

20-6-405. Approval or disapproval of application. The superintendent of public instruction shall approve only those applications which demonstrate compliance with the requirements of this plan. When an application is approved, the superintendent of public instruction shall determine the number of eligible pupils for the bonus payments. He shall notify the enlarged district's board of trustees and the county superintendent(s) of the disapproval of the application or of the approval of the application establishing the number of eligible pupils.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

20-6-406. Disbursal and deposit of bonus payments. On or before June 30 of the next 3 consecutive years following the year of application, the superintendent of public instruction shall disburse the bonus payments for approved applications to the enlarged school district. The general bonus payment shall be deposited by the county treasurer in the enlarged district's general fund, and the transportation bonus payment shall be deposited by the county treasurer in the transportation fund. These bonus payments shall not be considered as a part of the regular state equalization aid or state transportation aid received by the enlarged district.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545.

20-6-407. Effect on plan of reduction in territory. Any reduction in the amount of territory encompassed in the enlarged school district's territory during the 3-year period of bonus payments shall establish an ineligibility of the enlarged district to receive any remaining bonus payments under this plan.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

20-6-408. Effect of addition of component districts. The subsequent addition of other component districts to the enlarged district shall entitle such enlarged district to additional bonus payments under the provisions of this plan.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

20-6-409 and 20-6-410 reserved.

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain the indebtedness of the original territory against which such bonds were issued and shall be paid by levies on the original territory, except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys to the credit of the debt service fund of a district when its boundaries are changed shall be used to pay the existing bond principal and interest of the original territory issuing such bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529.

20-6-412. Property tax valuation after district boundary change. The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the second Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530.

20-6-413. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3) If any debts, other than bonded indebtedness, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above.

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532.

20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also shall be transferred to a similar fund of the consolidated district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533.

20-6-415. Cash disposition when new elementary district created. Whenever a new district is created under the provisions of 20-6-217, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for 1 month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.

20-6-416. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.

20-6-417. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.

20-6-418. Surrender of records when district ceases to exist. Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

History: En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.

Part 5

Opening and Closing of Schools

20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of any district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination thereof that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school or an accredited 6-year high school is operated by the district, grades 7 and 8 or their equivalents shall not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school which comprises the work of grades 10 through 12 or their equivalents and which is operated in conjunction with a junior high school;

(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;

(d) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents;

(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto;

(f) a postsecondary vocational-technical center established under the provisions of 20-7-311.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2).

20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when such opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least three pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school during the ensuing school fiscal year. Such petition shall identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend such school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of such school would be five or more.

(3) The county superintendent shall present the petition, trustees' approval, and his findings on the probable ANB to the board of county commissioners (budget board) for their consideration. The budget board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for such school is less than five ANB. In all other cases, the budget board may approve or disapprove the requested opening or reopening of the elementary school.

(4) If the budget board approves a school opening or reopening, the county superintendent shall send a copy of such approval, along with the petition, trustees' approval, and his estimate of the probable ANB, to the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for such school and such ANB amount shall be used for budgeting and foundation program purposes during the ensuing school fiscal year. No ANB amount shall be approved for the ensuing school fiscal

year for an opening or reopening school when the request for such school has not been received by the superintendent of public instruction before the fourth Monday of June.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602.

20-6-503. Opening or reopening of a high school. (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

(a) their reasons why the high school should be opened or reopened;

(b) the probable enrollment of such high school;

(c) the distance and road conditions of the route to neighboring high schools;

(d) the taxable value of the district;

(e) the building and equipment facilities available for such high school;

(f) the planned course of instruction for such high school;

(g) the planned methods of complying with high school standards of accreditation; and

(h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

20-6-504. Opening of a junior high school. (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for

approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.

20-6-505. Opening a junior high school when high school district operates a county high school. (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under

the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: **En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.**

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating a county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years shall be applied under 20-9-320 to prorate the maximum-general-fund-budget-without-a-voted-levy between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school shall be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: **En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606.**

20-6-507. Opening of a middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: **En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.**

20-6-508. Kindergarten through grade twelve system. Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: **En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).**

20-6-509. School closure. Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

History: En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.

Part 6

School Property

20-6-601. Power to accept gifts. All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).

20-6-602. Trustees' power over property. The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required. (1) The trustees of any district shall have the authority to purchase, build, exchange, or otherwise acquire or sell or otherwise dispose of sites and buildings of the district. Such action shall not be taken by the trustees without the approval of the qualified electors of the district at an election called for such approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum-general-fund-budget-without-a-vote amount prescribed in 20-9-316 through 20-9-321 and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) moneys are otherwise available under the provisions of this title and the ballot for the site approval for such building incorporated a description of the building to be located on the site.

(2) When an election is conducted under the provisions of this section, it shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 shall be permitted to vote in such election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure. (1) Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of 20-6-603.

(2) The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees' meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for 5 days after the date of its adoption.

(3) Any taxpayer may appeal the resolution of the trustees, at any time within 5 days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

(4) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205.

20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever, after March 17, 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of his intent to repossess the land, and the trustees shall thereafter have 1 year to remove any buildings or improvements placed there by the district. The trustees' failure to remove the buildings or improvements within that time shall constitute a forfeiture of such buildings or improvements. Before the owner or claimant shall have the right to give notice of repossession, the district's intention to permanently cease using the land shall have been established by resolution of the trustees and vote of the district's electors.

History: En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202.

20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building shall be conducted under the provisions of 20-9-204.

History: En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210.

20-6-607. Leasing district property and disposition of any rentals. The trustees of any district may rent, lease, or let any buildings, land, or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting may, in the discretion of the trustees, be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211.

20-6-608. Authority and duty of trustees to insure district property. The trustees of any district shall have the authority and it shall be their duty to insure any or all real and personal property of the district.

History: En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212.

20-6-609 through 20-6-620 reserved.

20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes, but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election shall be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an

additional levy or the issuance of bonds was approved for the purchase of such site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the board of health and environmental sciences of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of administration.

(4) The board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in such district.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203.

20-6-622. Review and approval of school building plans and specifications. (1) No school building in the state, either publicly or privately owned or operated, shall be built, enlarged, remodeled, or repaired until the plans and specifications for such construction have been submitted to and approved by the department of administration.

(2) The plans and specifications shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the rules promulgated by the department.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications submitted to the department of administration to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206.

20-6-623. Repealed. Sec. 15, Ch. 384, L. 1979.

20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district shall not make any payment under any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds $50,000 and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.

20-6-634. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

History: En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.

20-6-635. Contracts with Montana firms encouraged. The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

History: En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.

20-6-636. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsections (1), (2), or (3) of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.**

CHAPTER 7

SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

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Part 1

Accreditation and Curriculum

20-7-101. Standards of accreditation. Standards of accreditation for all schools shall be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501.

20-7-102. Accreditation of schools. (1) Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

(2) A nonpublic high school may, through its governing body, request that the board of public education accredit the school. Nonpublic high schools may be accredited in the same manner as provided in subsection (1).

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 270, L. 1979, provided: "This act is effective on passage and approval." Approved March 26, 1979.

20-7-103 through 20-7-110 reserved.

20-7-111. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1.

20-7-112. Sectarian publications prohibited and prayer permitted. No publication of a sectarian or denominational character shall be used or distributed in any school or be included in the school library. Instruction shall not be given in sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. He may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. He may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505.

20-7-114. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through in-service training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

20-7-115. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

20-7-116. Supervised correspondence study. The trustees of any district may provide supervised correspondence study for a pupil when it is impossible for him to attend a school due to the isolation of his residence or his mental or physical incapacity. Supervision of the correspondence course shall be provided by the district superintendent or the county superintendent if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510.

20-7-117. *(Temporary)* **Five-year-old schooling and preschool programs.** (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before the 1st grade enrollment closing date established by the district trustees for the school year for which the program is to be conducted. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before the 1st grade enrollment closing date established by the district trustees for the school year covered by the calculation.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

20-7-117. *(Effective July 1, 1980)* **Five-year-old schooling and preschool programs.** (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or has been enrolled by special permission of the board of trustees. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or has been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 334, L. 1979, provided: "This act is effective on July 1, 1980."

Part 2

Libraries

20-7-201. State visual, aural, and other educational media library. A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in a media library revolving fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the library media revolving fund, for the operation, maintenance, enlargement, and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511.

20-7-202. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

History: En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.

20-7-203. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

History: En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.

20-7-204. School library book selection. School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

History: En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.

20-7-205. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

History: En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.

Part 3

Vocational and Technical Education

20-7-301. Duties of the superintendent of public instruction. The superintendent of public instruction shall be the governing agent and executive officer of the state of Montana for vocational education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of vocational education, the superintendent of public instruction policies shall include:

(1) a state plan for such development;

(2) standards for vocational education courses and programs;

(3) the minimum requirements for granting postsecondary vocational-technical certificates to students;

(4) a review process for the establishment and deletion of programs;

(5) the necessary qualifications that a postsecondary vocational-technical center director must possess;

(6) instructor qualifications for vocational education courses and programs;

(7) criteria for approval of vocational education courses and programs which are to receive financial assistance;

(8) criteria for receiving, reviewing, and transmitting recommendations on postsecondary vocational-technical center operations and budget requests to the legislature;

(9) a basis for apportionment of all moneys appropriated by the legislature for vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(10) a basis for apportionment of all moneys received by the state of Montana for vocational education from the federal government in accordance with the acts of congress;

(11) a system of evaluation of vocational education which allows for consideration of the current and projected manpower needs and job opportunities;

(12) the tuition and fees to be charged at the postsecondary vocational-technical centers, based upon legislative appropriations available to the superintendent of public instruction for postsecondary vocational-technical centers;

(13) the allowable costs for rental of buildings for postsecondary vocational-technical center purposes;

(14) guidelines for the authority delegated by the superintendent of public instruction to the local school district board of trustees operating a postsecondary vocational-technical center; and

(15) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of vocational education.

History: En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979.

Compiler's Comments

Effective date. Sec. 22, Ch. 598, L. 1979, provided: "This act is effective on passage and approval. Approved April 18, 1979."

Appropriation statement of intent. House Bill 537, 1979, appropriated $1,500,000 to the Superintendent of Public Instruction to provide additional funding for vocational education. The statement of intent accompanying HB 537 provided: "Section 1. Rulemaking authority having been specifically granted under Section 1 of House Bill No. 537, this statement of intent is required by state law.

Section 2. The appropriation made in House Bill No. 537 shall be allocated by the Office of Superintendent of Public Instruction for secondary vocational education according to rules promulgated by that office. The rules shall provide for the placing of all approved programs of vocational and industrial arts education into one of several categories according to the cost of the program and the assigning of weight to each category to enable an equitable allocation of the appropriation. Additionally, the rules shall require each recipient school district to certify that expenditures for secondary vocational programs in that district will actually increase by the amount granted from the appropriation. Additionally, the rules shall provide for consideration of need of the respective school districts and equity of distribution."

20-7-302. Repealed. Sec. 21, Ch. 598, L. 1979.

20-7-302.1. State director of vocational education — duties. There is a state director of vocational education appointed by the superintendent of public instruction. He must:

(1) administer the vocational education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for superintendent of public instruction adoption;

(3) employ, with the confirmation of the superintendent of public instruction, the professional staff necessary for the state supervision and administration of vocational education;

(4) report the status of vocational education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all vocational education records in his office;

(6) provide vocational education supervisory and consultative assistance to districts;

(7) provide a postsecondary vocational-technical center system policy and procedural handbook for institutional operations that will standardize operations among the centers;

(8) identify and direct the county treasurer in those counties where postsecondary vocational-technical centers are located to establish the necessary multifund structures for postsecondary vocational-technical center financial operations;

(9) meet with the chairman of the board of trustees, district superintendent, and center director of each postsecondary vocational-technical center at least twice each year to discuss recommended changes in the superintendent of public instruction's policies and procedures;

(10) formulate and put into effect uniform fiscal, student, staff, and program accounting systems for the postsecondary vocational-technical centers;

(11) prepare any necessary reports for the superintendent of public instruction or the legislature;

(12) represent the postsecondary vocational-technical center system to state agencies, associations, and others when appropriate;

(13) recommend a staffing pattern for the postsecondary vocational-technical centers;

(14) provide for the evaluation of programs and services within each postsecondary vocational-technical center;

(15) provide for evaluation of each postsecondary vocational-technical center's ability to meet employment and student vocational-technical education needs; and

(16) perform any other duty assigned by the superintendent of public instruction.

History: **En. Sec. 2, Ch. 598, L. 1979.**

Compiler's Comments

Effective date. Sec. 22, Ch. 598, L. 1979, provided: "This act is effective on passage and approval." Approved April 18, 1979.

20-7-303. District authorization to establish and maintain vocational education courses and programs. The trustees of any district, community college district, or unit of the Montana university system may establish and maintain a vocational education course or program that complies with the vocational education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal financing, it shall be approved by the superintendent of public instruction.

History: **En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979.**

20-7-304. Precedence of state laws for vocational education. If, in construing the laws of Montana, there is a conflict between the laws providing for postsecondary vocational-technical centers and any other laws governing the operation of schools, the former have controlling authority.

History: **En. Sec. 7, Ch. 598, L. 1979.**

20-7-305 through 20-7-310 reserved.

20-7-311. Postsecondary vocational-technical center designation. (1) Postsecondary vocational-technical centers shall be designated by the superintendent of public instruction only upon direction of the legislature. Applications for designation must be made in accordance with the following procedure:

(a) The trustees of any high school district, of a county high school, of a community college district, or the governing board of any unit of the Montana university system may submit an application for designation of a postsecondary vocational-technical center to be operated by such trustees or governing board. The application for designation shall be submitted in accordance with the time, data, and form requirements prescribed by the superintendent of public instruction. Applicant high school districts, county high schools, or community college districts shall be located in a county with a taxable valuation of at least $45 million.

(b) Applications are to be presented to the superintendent of public instruction. The superintendent of public instruction shall examine the application and draft recommendations. The application, together with all recommendations, shall be presented by the superintendent of public instruction to the next following legislature.

(2) The superintendent of public instruction shall recognize the presently designated postsecondary vocational-technical centers operated by the respective board of trustees of school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A"

of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County.

History: En. 75-7707 by Sec. 410, Ch. 5, L. 1971; (amd. Sec. 8, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 8, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7707; amd. Sec. 14, Ch. 598, L. 1979.

20-7-312. Local administration. (1) Subject to the requirements of the laws of the state of Montana and the policies of the superintendent of public instruction as administered by the state director of vocational education, the board of trustees operating a postsecondary vocational-technical center shall:

(a) employ, from among qualified applicants, a postsecondary vocational-technical center director;

(b) employ administrative personnel, faculty members, and employees for the postsecondary vocational-technical center according to the policies and procedures of the board of trustees;

(c) recommend, develop, and submit budgets for the postsecondary vocational-technical centers;

(d) establish and collect student tuition and fees;

(e) recommend to the superintendent of public instruction through the state director of vocational education:

(i) proposals regarding postsecondary vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual postsecondary vocational-technical center buildings;

(f) manage buildings erected and equipped on leased grounds;

(g) receive and administer gifts and bequests to the postsecondary vocational-technical center according to a written plan submitted to the superintendent of public instruction; and

(h) perform any other administrative responsibilities not inconsistent with law and required by the superintendent of public instruction.

(2) The board of trustees operating a postsecondary vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of postsecondary vocational-technical center buildings on leased property.

History: En. 75-7710 by Sec. 413, Ch. 5, L. 1971; (amd. Sec. 11, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 11, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7710; amd. Sec. 3, Ch. 598, L. 1979.

20-7-313. Exception to school calendar. The postsecondary vocational-technical center shall not be required to conform to the 180-day school calendar so that programs shorter or longer than this calendar may be offered.

History: En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.

20-7-314. Lease or purchase of state property for postsecondary vocational-technical center purposes. (1) The state of Montana, acting by and through the superintendent of public instruction, is hereby empowered and authorized to enter into a lease agreement for a term not to exceed 40 years in order to lease to a district operating a postsecondary vocational-technical center any building or lands owned by the state and financed in whole or in part by an appropriation made by the legislature of the state of Montana for the purpose of supporting the district's postsecondary vocational-technical center. The consideration necessary to support such a lease may be nominal.

(2) The superintendent of public instruction is hereby authorized to transfer or direct transfer of title held by the state of Montana in buildings or lands financed in whole or in part by an appropriation by the state legislature to a district operating a postsecondary vocational-technical center, at any time the superintendent of public instruction deems such transfer to be in the best interests of both the state and the district involved, provided that this authorization extends only to buildings or lands which are to be used by the district for postsecondary vocational-technical education purposes.

History: En. 75-7715 by Sec. 418, Ch. 5, L. 1971; R.C.M. 1947, 75-7715; amd. Sec. 15, Ch. 598, L. 1979.

20-7-315 through 20-7-320 reserved.

20-7-321. Acceptance of acts of congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the "Vocational Education Act of 1963" and the "Vocational Education Amendments of 1968" and further hereby accepts and assents to the terms and provisions of all acts of the congress amendatory of the "Vocational Education Act of 1963" and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.

History: En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.

20-7-322. *(Temporary)* **State treasurer custodian of vocational education moneys.** The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated, or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the superintendent of public instruction, he shall disburse all moneys appropriated or received for vocational education.

20-7-322.*(Effective July 1, 1980)* **State treasurer custodian of vocational education moneys.** (1) The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated, or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the superintendent of public instruction, he shall disburse all moneys appropriated or received for vocational education.

(2) The state treasurer is the treasurer for all postsecondary vocational-technical centers, and all money received by postsecondary vocational-technical centers from any source shall be deposited in the state treasury

pursuant to 17-6-105, unless the source of the money specifies deposit somewhere other than in the state treasury.

History: **En. 75-7706 by Sec. 409, Ch. 5, L. 1971; (amd. Sec. 6, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 6, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7706; amd. Sec. 16, Ch. 598, L. 1979; amd. Sec. 2, Ch. 682, L. 1979.**

Compiler's Comments

Effective date. Sec. 6, Ch. 682, L. 1979, provided: "This act is effective on July 1, 1980."

20-7-323. Program and budget categories for postsecondary vocational-technical education centers. (1) The superintendent of public instruction shall have the sole authority for the approval of the postsecondary vocational-technical education programs and their budgets. Such programs and budgets shall be placed into three categories defined as:

(a) maintenance and operation, which shall include programs and costs for instruction; vocational guidance and counseling; job placement; travel of pupils and personnel while engaged in a program; acquisition, maintenance, and repair of equipment; and the rental of necessary emergency facilities for not more than 1 year;

(b) construction, which shall include the program and cost for construction of new buildings; acquisition, expansion, remodeling, and alteration of existing buildings; site acquisition and improvements; architectural fees; and the purchase of initial equipment;

(c) ancillary services, which shall include the program and cost for the services and activities necessary to assure quality in the postsecondary vocational-technical center's instruction, such as supervision and administration of the center, program evaluation, special demonstration and experimental programs, and development of instructional materials and curriculum.

(2) The trustees of the designated district or other governing board where the postsecondary vocational-technical center is located shall submit program proposals and the related budgets on the basis of these categories and in accordance with the program and budget approval procedure prescribed by the superintendent of public instruction.

History: **En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.**

20-7-324. Sources of financing for postsecondary vocational-technical center budgets — superintendent of public instruction administration. (1) The total of the budgets approved by the superintendent of public instruction, together with the budget for the cost of state administration of the postsecondary vocational-technical centers, shall constitute the total maximum approved statewide budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing postsecondary vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated postsecondary vocational-technical center is located is hereby authorized to levy a tax of not to exceed 1 ¼ mills for calendar year 1979 and 1 ½ mills thereafter on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the postsecondary vocational-technical center located within the county.

(c) Designated postsecondary vocational-technical centers shall be eligible to receive such funds from the federal government as the superintendent of public instruction may provide pursuant to applicable acts of congress.

(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as a condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 9, part 4, of this title in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the superintendent of public instruction.

(2) The superintendent of public instruction shall direct the distribution of the funds specified in subsections (1)(a) and (1)(c) on the basis of the budgets approved by the superintendent of public instruction. The funds earned by the mill levy specified in subsection (1)(b) shall be credited by the county treasurer to the postsecondary vocational-technical center fund.

(3) The superintendent of public instruction shall determine the amount of financing available from these four sources of revenue and may approve budgets for maintenance and operation, construction, and ancillary services. The aggregate amount of the budgets so approved by the superintendent of public instruction for postsecondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; (amd. Sec. 10, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 10, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 26, Ch. 266, L. 1977; R.C.M. 1947, 75-7709; amd. Sec. 4, Ch. 598, L. 1979.

20-7-325. *(Temporary)* **Postsecondary vocational-technical center fund — nongeneral fund money expended first — reversion of general fund money.** (1) Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district shall establish a postsecondary vocational-technical center fund. All money prescribed and received under the provisions of 20-7-324 shall be credited to the postsecondary vocational-technical center fund. The expenditure of the money deposited in the postsecondary vocational-education center fund shall be made under the budget and for the programs approved by the superintendent of public instruction under the provisions of 20-7-323 and the financial administration provisions of this title.

(2) A postsecondary vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general

fund appropriations. All state general fund money appropriated or disbursed to a postsecondary vocational-technical center which are unexpended at fiscal year end shall revert to the state general fund.

(3) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the superintendent of public instruction shall constitute the final budget approval, and the inclusion of such fund in the district's preliminary budget and the final budget approved by the budget board shall not be required.

(4) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center fund budget, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142.

20-7-325. *(Effective July 1, 1980)* **Postsecondary vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money.** (1) Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district shall request the establishment of the appropriate accounts in the state treasury. These accounts shall be established in the appropriate state treasury funds as determined by the department of administration. All money prescribed and received under the provisions of 20-7-324 shall be credited to these accounts. The expenditure of the money deposited in the state treasury shall be made in accordance with procedures established by the department of administration. Such expenditures shall be made under the budget and for the programs approved by the superintendent of public instruction under the provisions of 20-7-323 and the financial administration provisions of this title.

(2) A postsecondary vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general fund appropriations. All state general fund money appropriated or disbursed to a postsecondary vocational-technical center which are unexpended at fiscal year end shall revert to the state general fund.

(3) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the superintendent of public instruction shall constitute the final budget approval.

(4) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142.

History: En. 75-7208 by Sec. 347, Ch. 5, L. 1971; R.C.M. 1947, 75-7208; amd. Sec. 1, Ch. 205, L. 1979; amd. Sec. 18, Ch. 598, L. 1979; amd. Sec. 3, Ch. 682, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 682, L. 1979, provided: "This act is effective on July 1, 1980."

20-7-326. Additional levy by school district. Notwithstanding the provisions of 20-7-324, the trustees operating a postsecondary vocational-technical center may propose to adopt a budget in excess of the amount appropriated by the legislature for salaries and benefits. The legislature shall base the appropriation for salaries and benefits on amounts appropriated in the previous legislative session. When the trustees determine that an additional amount is required, they must submit the proposition for an additional levy to the qualified electors of the district pursuant to 20-20-301 and in the manner prescribed by 20-9-353. When another additional levy proposition is presented to the electorate, the proposition for an additional levy for a postsecondary vocational-technical center may be presented as a separate issue on the ballot or it may be consolidated with the additional levy proposition of the high school district.

History: **En. Sec. 5, Ch. 598, L. 1979.**

20-7-327. Source of financing for postsecondary vocational-technical center facility maintenance. The source of funds for maintenance, remodeling, and renovation of postsecondary vocational-technical center facilities may be either local funds or state funds specifically appropriated by the legislature and approved by the superintendent of public instruction.

History: **En. Sec. 6, Ch. 598, L. 1979.**

20-7-328 through 20-7-330 reserved.

20-7-331. Admission of pupils with priority to Montana residents. Any person who qualifies as a postsecondary vocational-technical pupil as defined in this title shall be admitted to the postsecondary vocational-technical center of his choice, except that pupils who qualify as residents of the state of Montana as hereafter defined shall be given priority in case enrollment limitations are caused by resource limitation.

History: **En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.**

20-7-332. Tuition rates. (1) Tuition may be charged to any resident or nonresident of the state of Montana by the governing board of any postsecondary vocational-technical center at rates to be determined by the superintendent of public instruction. The superintendent of public instruction shall also prescribe permissible uses for any tuition authorized.

(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school.

History: **En. 75-7713 by Sec. 416, Ch. 5, L. 1971; R.C.M. 1947, 75-7713; amd. Sec. 1, Ch. 223, L. 1979; amd. Sec. 19, Ch. 598, L. 1979.**

Compiler's Comments

Composite section. This section was amended by Ch. 223 and Ch. 598, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Since Ch. 223 and Ch. 598 do not conflict conceptually, additions were made to incorporate the concepts of both chapters.

20-7-333. *(Temporary)* **Pupil fees and disposition of collected fees.** (1) Fees for the use of equipment and material used in instruction may be charged by the trustees or other governing board of the postsecondary vocational-technical center. The superintendent of public instruction shall prescribe the basis and limitations for the charging of such fees.

(2) Fees collected by the postsecondary vocational-technical center shall be deposited with the county treasurer in the fund designated by the superintendent of public instruction for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the superintendent of public instruction.

20-7-333. *(Effective July 1, 1980)* **Pupil fees and disposition of collected fees.** (1) Fees for the use of equipment and material used in instruction may be charged by the trustees or other governing board of the postsecondary vocational-technical center. The superintendent of public instruction shall prescribe the basis and limitations for the charging of such fees.

(2) Fees collected by the postsecondary vocational-technical center shall be deposited with the state treasurer in the fund designated by the superintendent of public instruction for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the superintendent of public instruction.

History: En. 75-7714 by Sec. 417, Ch. 5, L. 1971; R.C.M. 1947, 75-7714; amd. Sec. 20, Ch. 598, L. 1979; amd. Sec. 4, Ch. 682, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 682, L. 1979, provided: "This act is effective on July 1, 1980."

Part 4

Special Education for Exceptional Children

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(2) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic

and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(3) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(4) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

(5) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(7) "Other health-impaired" means limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(8) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(10) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(11) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801.

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

(a) placement of handicapped children in the least restrictive alternative setting;

(b) due process for all handicapped children;

(c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each handicapped child; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying handicapped children;

(5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education; and

(12) administering regional special education services for children in need of special education in accordance with policies of the board of public education;

(13) contracting directly with local school districts or cooperative service organizations for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979.

20-7-404. Cooperation of state agencies. The state department of health, the department of institutions, the department of social and rehabilitation services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804.

20-7-405 through 20-7-410 reserved.

20-7-411. Regular classes preferred — obligation to establish special education program. (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18, inclusive.

(3) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979.

20-7-412. Establishment of individual district special education program. (1) The trustees of any district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for handicapped persons between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that such programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similiar age group unless specifically provided by law.

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979.

20-7-413. Petition of parents for establishment of special education program. The parents of persons requiring special education may petition the board of trustees to establish an individual district special education program. Parents residing in several districts may petition the board of trustees of each district to cooperatively establish a special education program. The interlocal cooperative agreement authorized in Title 7, chapter 11, part 1 may be used to establish a multidistrict special education program.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, and such determination shall be made in compliance with the procedures established in the rules of the superintendent of public instruction.

(2) Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the

special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. No special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the maximum-budget-without-a-vote for special education.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811.

20-7-415. Regional special education services — funding — expiration date. (1) There is established a regional special education services program to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regional special education services shall be limited to:

(a) providing direct services to handicapped children who are not adequately served by a district program;

(b) initiating special services for handicapped children as a service model which may then be continued as an individual district or cooperative district program;

(c) coordinating and conducting in-service training for special education and local district personnel in the region; and

(d) assisting local districts in the region in the development and expansion of individual district or cooperative district programs.

(2) Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be available to support regional special education programs and services. Such funds may be supplemented by appropriate federal funds. The authorization for regional special education services for children expires on June 30, 1980.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817.

20-7-416 through 20-7-419 reserved.

20-7-420. Residency requirements for financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of his parents or of his guardian unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for special education students.

History: En. Sec. 1, Ch. 470, L. 1979.

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. (1) With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana.

(2) Tuition as required under 20-5-305 and 20-5-312 may be charged as provided in 20-7-420.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 470, Ch. 481, and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. All three chapters incorporated the same concept into this section. Since Ch. 470 was the most comprehensive, its language, with a few minor changes, was chosen.

Effective date. Sec. 5, Ch. 661, L. 1979, provided: "This act is effective July 1, 1980."

20-7-422. *(Temporary)* **Out-of-state tuition for special education children.** (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of social and rehabilitation services and the department of institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(b)(iv)(A) in the maximum-budget-without-a-vote for special education.

20-7-422. *(Effective July 1, 1980)* **Out-of-state tuition for special education children.** (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of social and rehabilitation services and the department of institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote for special education.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979.

Compiler's Comments

Correction. In sec. 3, Ch. 661, L. 1979, the reference in subsection (2) was to 20-7-431(1)(b)(iii)(A) (nonexistent). The Code Commissioner changed the reference to "20-7-431(1)(a)(iii)(A)" to correct the error, which arose through amendments made by the legislature in the course of enacting Ch. 661.

20-7-423. *(Temporary)* **Arranging attendance in a private institution.** Whenever the trustees determine that a handicapped child is in need of services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 20-7-431(1)(b)(iv)(A).

20-7-423. *(Effective July 1, 1980)* **Arranging attendance in a private institution.** Whenever the trustees determine that a handicapped child is in need of services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 20-7-431(1)(a)(iii)(A).

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979.

Compiler's Comments

Correction. In sec. 3, Ch. 661, L. 1979, the reference in section 20-7-423, MCA, was to 20-7-431(1)(b)(iii)(A) (nonexistent). The Code Commissioner changed the reference to "20-7-431(1)(a)(iii)(A)" to correct the error, which arose through amendments made by the legislature in the course of enacting Ch. 661.

20-7-424. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district or county, whichever is applicable, wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of 20-5-305 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810.

20-7-425 through 20-7-430 reserved.

20-7-431. *(Temporary)* **Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) administration: salaries, benefits, supplies, and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

(i) salaries of professional administrative personnel—a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(b) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries of principals and clerical personnel—a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program, but not to exceed 1.75 times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost; if shared with regular programs—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses with the exception of the following items—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(c) library services: salaries, books and periodicals, and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(d) supportive services: salaries, benefits, and other expenses:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(e) operation of plant: salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses—the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) maintenance of plant: salaries, benefits, replacements and parts, contracted services—the superintendent of public instruction shall make regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) school food services—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(h) student body and auxiliary services: salaries and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(i) other current charges: insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences—no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. However, any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program.

(ii) insurance—the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(iii) all other expenses—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(j) capital outlay: remodeling and improvements, equipment, and other:

(i) classroom remodeling and improvements for a program for handicapped students who need special facilities—the actual total cost; all other remodeling and improvements—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment—the actual total cost;

(iii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iv) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(v) other—the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year;

(k) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating the portion of operation and maintenance costs, insurance, building, and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations.

20-7-431. *(Effective July 1, 1980)* **Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations.

(b) If special education budgets approved by the superintendent of public instruction exceed legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon its budget as a percent of all approved special education budgets. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 481 and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsections (6)(a) and (6)(b) represent apparently conflicting provisions enacted by the above chapters.

Correction. In sec. 1, Ch. 661, L. 1979, the reference in subsection (2)(b) was to subsection (1)(c), and the reference in subsection (2)(c) was to subsection (1)(d)(i) (nonexistent). The Code Commissioner changed the references to "subsection (1)(b)" and "subsection (1)(c)(i)", respectively, to correct the errors which arose through amendments made by the legislature in the course of enacting Ch. 661.

Effective date. Sec. 5, Ch. 661, L. 1979, provided: "This act is effective July 1, 1980."

20-7-432 through 20-7-440 reserved.

20-7-441. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation, which shall be provided by the resident district, when he is enrolled:

(1) in a special education class or program operated by the district of such child's residence;

(2) in a special education class or program operated by a Montana district other than the child's resident district;

(3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or

(4) under an approved tuition agreement in a private institution.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.

20-7-442. State transportation reimbursement for special education children. Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing two-thirds of the reimbursement and the county in which the children reside providing the remainder.

History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815.

20-7-443. Financial assistance for under-six-year-old special education class or program. Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement under 20-7-442.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816.

20-7-444 through 20-7-450 reserved.

20-7-451. Authorization to create full service special education cooperatives — special funding provisions. (1) A school district may contract with one or more other school districts to establish a cooperative to perform all special education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services including but not limited to janitorial and communication services.

(3) The superintendent of public instruction may transfer directly to a cooperative the state and federal portion of a district's budgeted costs for contracted special education services.

History: En. Sec. 1, Ch. 471, L. 1979.

Compiler's Comments

Codification. Sec. 7, Ch. 471, L. 1979, provided: "Sections 1 through 6 are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions contained in Title

20, chapter 7, part 4, apply to sections 1 through 6."

Effective date. Sec. 8, Ch. 471, L. 1979, provided: "This act is effective upon passage and approval." Approved April 9, 1979.

20-7-452. Detailed contents of full service special education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget therefor;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the cooperative, including representation of the contracting districts on the joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

History: En. Sec. 2, Ch. 471, L. 1979.

20-7-453. Submission of agreement to attorney general. (1) Every contract made under the provisions of 20-7-451 through 20-7-456 must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to 20-7-451 unless he finds that it does not meet the conditions set forth in 20-7-451 and 20-7-452, in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general.

History: En. Sec. 3, Ch. 471, L. 1979.

20-7-454. Final approval and filing of special education cooperative contract. Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service special education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

History: En. Sec. 4, Ch. 471, L. 1979.

20-7-455. Authorization to appropriate funds for purpose of full service special education cooperative contract. A school district entering into a full service special education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish.

History: En. Sec. 5, Ch. 471, L. 1979.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, special education cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979.

Part 5

Traffic Education

20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise the following definitions apply:

(1) "Traffic education" means instruction in the motor vehicle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of motor vehicles.

(2) "Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

(3) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(4) "Traffic education account" means the state treasury account in the earmarked revenue fund for the deposit and disbursement of state traffic education revenue.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

(1) develop, administer, and supervise the program of instruction in traffic education;

(2) establish basic course requirements in classroom instruction and behind-the-wheel instruction for traffic education;

(3) establish the classroom instruction and the behind-the-wheel instruction qualifications for a teacher of traffic education;

(4) approve teachers of traffic education when such teachers are qualified;

(5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when such courses meet the criteria for approval;

(7) promulgate a policy for the distribution of the traffic education moneys to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law; and

(8) assist districts with the conduct of traffic education.

History: En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904.

20-7-503. District establishment of traffic education program. The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

(1) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;

(2) taught by a teacher of traffic education;

(3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and

(4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

History: En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905.

20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines assessed and bails forfeited on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, or a city ordinance and relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:

(a) if a fine is imposed, 20% of the fine imposed;

(b) if multiple offenses are involved, 20% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 20% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 20% of the forfeited bail.

(2) Five percent of all money received by the state from the collection of the motor vehicle driver's license fee provided for under the laws of Montana shall be contributed to the traffic education account.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979.

20-7-505. Transmittal of proceeds from fines and other sources. (1) The portion of the proceeds from fines and bail forfeitures which are to be deposited in the traffic education account shall be transmitted to the city or county treasurer, as the case may be, by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers under law. The court shall indicate what portion of each fine is to be credited to the traffic education account. The city and county treasurers shall transmit monthly to the state treasurer, without deduction, the portions of the fines received which are to be credited to the traffic education account.

(2) When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account.

History: **En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903.**

20-7-506. Annual allocation and distribution of traffic education account proceeds — allocation for state administration. (1) The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts shall be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:

(a) development, printing, and distribution of essential materials;

(b) preparation of teachers of traffic education;

(c) state supervision of the program; and

(d) any and all other activities deemed necessary by the superintendent of public instruction.

History: **En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906.**

20-7-507. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. The state traffic education reimbursement and all nontax receipts for traffic education shall be deposited in the district's traffic education fund. The expenditure of the moneys deposited in the district's traffic education fund shall not be subject to the budgeting provisions of this title and the moneys may be expended for traffic education.

History: **En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907.**

Part 6

Textbook Regulation

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: **En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.**

20-7-602. Textbook selection and adoption. Textbooks shall be selected by the district superintendent or by the school principal if there is no district superintendent. Such selections shall be subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

History: **En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603.**

20-7-603. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: **En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.**

20-7-604. Licensing textbook dealers. (1) Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement to:

(a) guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools, except that such prices may be reduced in accordance with this section;

(b) guarantee that at no time shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than $2,000 but not more than $10,000. The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: **En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605.**

20-7-605. Notification and processing of complaint against a licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify his error within 30 days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607.

20-7-606. Doing business without textbook dealer's license — penalty. Any textbook dealer who shall sell or offer for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, he shall be fined not less than $500 or more than $2,000.

History: En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608.

20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, he shall forfeit his surety bond and textbook dealer's license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of such licensed textbook dealer and for revocation of his textbook dealer's license.

History: En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) No textbook dealer or his agent shall offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) No trustee, county superintendent, or school employee shall accept any emolument or other inducement from a textbook dealer or agent of such dealer for the use of his influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section shall constitute a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of such misdemeanor shall be removed from his position.

(4) Nothing in this section shall be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: **En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610.**

Part 7

Adult Education

20-7-701. Definition of adult education and adult basic education. (1) As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(a) The term "adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

(b) The term "adult basic education" means instruction in basic skills such as reading, writing, arithmetic, and other skills required to function in society offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) Neither definition may include the instruction in postsecondary vocational-technical centers.

History: **En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512.**

20-7-702. Authorization to establish adult education program. The trustees of any district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, vocational education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: **En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513.**

20-7-703. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: **En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.**

20-7-704. Adult education tuition and fees. The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

History: **En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516.**

20-7-705. Adult education fund. (1) A separate adult education fund shall be established when an adult education program is operated by a district or community college district. The financial administration of such fund shall comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of any district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund shall be the depository for all federal, state, and district moneys received by the district in support of the adult education program.

(3) The trustees of any district may authorize the levy of a tax of not more than 1 mill on the district for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by such levy. The approval of the superintendent of public instruction shall have been acquired by the trustees before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for such approval.

(4) Whenever the trustees of any district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of such program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program which has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report such levy requirement to the county commissioners on the second Monday of August and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515.

20-7-706 through 20-7-710 reserved.

20-7-711. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school or community college district.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district may apply to the superintendent for funds for its

adult basic education courses. The financial adminstration and accounting of adult basic education funds shall be the same as that of adult education.

History: **En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1.**

Part 8

Public Recreation

20-7-801. Public recreation program authorized. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: **En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.**

20-7-802. How program operated — independently or cooperatively — delegation. Any city, town, school district, or any board thereof, including a board of park commissioners, may:

(1) (a) operate such a program independently; or

(b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or

(2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

History: **En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.**

20-7-803. Authority to accept gifts. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

(1) property under its custody and management;

(2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(3) private property, with the consent of its owners.

History: **En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.**

20-7-804. Authority of board of public education. In all cases where school property is utilized, the board of public education shall have authority:

(1) to establish minimum qualifications of local recreational directors and instructors; and

(2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

History: **En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.**

20-7-805. Recreational use of school facilities secondary. The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

History: **En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.**

Part 9

Gifted and Talented Children

20-7-901. Definitions. As used in this part the following definitions apply:

(1) "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) "Professionally qualified persons" means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies.

History: **En Sec. 1, Ch. 310, L. 1979.**

20-7-902. School district programs to identify and serve the gifted and talented child. (1) A school district may identify gifted and talented children and devise programs to serve them.

(2) In identifying gifted and talented children, the school district shall:

(a) consult with professionally qualified persons and the parents of children being evaluated;

(b) consider a child's demonstrated or potential gifts or talents; and

(c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

History: **En Sec. 2, Ch. 310, L. 1979.**

20-7-903. Funding of programs to serve gifted and talented children. (1) The superintendent of public instruction shall adopt criteria for gifted and talented children's program proposals and the procedures for submission of such proposals. Proposals approved by the superintendent of public instruction must be funded by money appropriated to the superintendent for that purpose.

(2) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(3) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

History: En Sec. 3, Ch. 310, L. 1979.

20-7-904. Review and recommendations of proposals. (1) Program proposals submitted by school districts to the superintendent of public instruction shall contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction must establish a procedure for proposed review and approval.

History: En Sec. 4, Ch. 310, L. 1979.

CHAPTER 8

STATE SCHOOL FOR THE DEAF AND BLIND

Part 1 — General Provisions

Section

20-8-101. State school for deaf and blind — independent institution.
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20-8-103. Board of public education rules.
20-8-104. Eligibility of children for admittance.
20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty.
20-8-106. Duration of attendance at school.
20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
20-8-108. Provisions for indigent students.
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20-8-110. Property vested in school.
20-8-111. Duty of board of public education as to property of school.
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20-8-116. Employment placement officer — duties.
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Part 1

General Provisions

20-8-101. State school for deaf and blind — independent institution. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls, shall be known and designated as the Montana state school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the board of public education, with a local executive board to be appointed in the manner and to have the powers, authority, and duties granted to and required of that board by the provisions of 20-25-303 and 20-25-304. However, the transfer of that school or any change in the name thereof or in the objects or purposes thereof may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school prior to July 1, 1943.

History: **En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102.**

20-8-102. Objects and purposes. The Montana state school for the deaf and blind shall be a residential and boarding school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and for such reason are unable to receive a sufficient or proper education in the public schools of the state. The object and purpose of such school shall be to furnish and provide, by the use of specialized methods and systems, an ordinary public school education and to teach such trades and vocations as will enable children attending such school to become independent and self-sustaining citizens. Increased and additional facilities shall be provided from time to time for the more thorough and successful training of those who show a special aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and foremen, permanently or temporarily employed for such purpose, and this requirement shall apply to both male and female pupils.

History: **En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103.**

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe such rules as the board may deem necessary and proper for the maintenance and government of the school, the admission of children thereto in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that said superintendent must have a ready and working knowledge of the sign language and must have taught 3 or more years in a school for the deaf.

History: **En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104.**

20-8-104. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who are not more than 18 years of age residing within the state of Montana and nonresident children who are not more than 18 years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school.

History: **En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105.**

20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty. (1) Every parent, guardian, or other person having the custody or control of any child between the ages of 5 and 18 years whose hearing or sight is so defective that such child cannot be properly educated in the public schools of the state shall make application to the superintendent of said school for admission to such school for at least 9 months during each school year for a period of 10 years, unless such child is being taught in a private school or in a similar institution in another state which affords such child an education to the same extent as such child can receive in the Montana state school for the deaf and blind or unless such child be found, for any reason, to be ineligible to admission to such school. If such child is being taught in a private school or in a similar institution in another state, such attendance must be for at least 9 months in each year for 10 years, unless such child shall arrive at the age of 21 years or shall have become self-sustaining before the expiration of such 10-year period.

(2) The failure of any parent, guardian, or other person having the custody or control of any blind or deaf child to comply with the provisions of this section shall be deemed a misdemeanor and punishable by a fine of not less than $5 or more than $25 for the first offense and not less than $25 or more than $50 for each subsequent offense. Upon conviction of any parent, guardian, or person having custody or control of any such child of a failure to comply with the provisions of this section, the court in which such conviction is had shall enter in its docket an order directing such parent, guardian, or other person to comply with the provisions of this section within 10 days thereafter and shall deliver a copy of such order to such parent, guardian, or other person.

History: **En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106.**

20-8-106. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school until reaching the age of 21 years unless the board of public education and superintendent determine that attendance at the school will not benefit the child, provided that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of public education and superintendent.

History: **En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107.**

20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Deaf and blind children who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state, provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application, and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state.

(2) Indian children who are Montana residents and wards of the United States shall be eligible to and shall be admitted to such school on the same terms as residents. The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108.

20-8-108. Provisions for indigent students. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides, upon application of any relative or friend or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county and, upon his rendering his proper accounts therefor quarter-annually, the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109.

20-8-109. Time of regular school term. The regular term of school shall begin on the second Wednesday of September and close on the second Wednesday of June following, provided that the superintendent of such school, with the consent and approval of the board of public education, may provide for the opening of the school on another day and for the closing of the same on another day, provided that the term fixed shall be for a period of 9 months.

History: En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111.

20-8-110. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana state school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof, and all donations, gifts, devises, or grants which have been heretofore or may hereafter be made by any person or corporation to said school shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113.

20-8-111. Duty of board of public education as to property of school. The board of public education shall have the power and it shall be its duty to receive, hold, manage, use, and dispose of any and all real and personal property made over to such board or to the state of Montana by purchase, gift, devise, bequest, or otherwise acquired and the proceeds, interest, and income thereof for the use and benefit of said school.

History: **En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114.**

20-8-112. Expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana state school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

History: **En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116.**

20-8-113. Additional duties — superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind is hereby authorized to add to his present duties that of acting as combined employment placement officer and school field worker temporarily for the sake of economy in order to set up this office and operate same until such time as in his opinion evidence warrants employing a part-time employment officer and school field worker and part-time instructor.

History: **En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117.**

20-8-114. Instructor. When said superintendent believes he needs such part-time instructor, he shall make recommendations to the board of public education.

History: **En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.**

20-8-115. Employment placement officer — qualifications. Such employment placement officer must have a working knowledge of the sign language and taught 3 years or more in a deaf school.

History: **En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.**

20-8-116. Employment placement officer — duties. As employment placement officer, it shall be his duty to gather and record such data and statistics to help him locate suitable employment for such deaf and hard-of-hearing persons not in attendance at said school or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance. He shall consult with various county, state, and federal agencies and with the department of social and rehabilitation services to secure employment for self-sustaining persons. He shall coordinate his work with such federal agencies as social security and reemployment for those out of work, as required under this law.

History: **En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120.**

20-8-117. Field worker — duties. As field worker he shall consult with school officers, parents, or guardians of adult deaf relative to handicapped children, relative to their admission to said school.

History: **En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.**

20-8-118. Part-time instructor's duties. As part-time instructor, he shall teach and prepare students in the school for employment and other duties, as directed by the superintendent.

History: **En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.**

20-8-119. Salary. His salary shall be fixed by the board and paid as salaries of other employees of said school.

History: **En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.**

CHAPTER 9

FINANCE

Part 1 — School Budgets

Section

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Part 1

School Budgets

20-9-101. Application of budget system for districts. The school budgeting procedure and provisions of this title apply to elementary and high school districts and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979.

20-9-102. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.

20-9-103. School budget form. (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction except that a district may, with the approval of the superintendent of public instruction, use a more detailed form.

History: En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704.

20-9-104. General fund cash reserve. At the end of each school fiscal year, the trustees of each district shall designate what portion of the general fund end-of-the-year cash balance shall be earmarked as cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve shall not exceed 35% of the final general fund budget for the ensuing school fiscal year and shall not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts. Any portion of the general fund end-of-the-year cash balance that is not earmarked for cash reserve purposes shall be cash reappropriated which shall be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924.

20-9-105 through 20-9-110 reserved.

20-9-111. Initial budget items for completion — estimated budgeting authority. (1) During the month of March, the county superintendent shall complete the portions of the budget form providing information about the last completed school year and, separate from the budget form, estimate the maximum amount to be available for the general fund budget in the ensuing year without an additional levy. By April 10, the county superintendent shall send to each district two copies of the budget form, the general fund estimate, and any other information or data as may be required by the superintendent of public instruction or that the county superintendent may deem necessary.

(2) Upon receipt of the budget forms, the district shall complete those portions of them which require information about the then-current school year.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705.

20-9-112. Notice of preliminary budget meeting. During the month of May, the county superintendent shall publish a notice at least one time in the official newspaper of the county, stating that the trustees of each district in the county and the trustees of the community college district will meet separately in regular session on the fourth Monday in June to prepare and adopt a preliminary budget for the next ensuing school fiscal year and that any taxpayer in the district may attend such meeting and be heard on such preliminary budget.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

20-9-113. Preparation and adoption of preliminary budget by trustees. (1) The trustees of each district shall meet at their regular place of meeting on the fourth Monday in June to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but shall not exceed 5 days in total. Any taxpayer in the district may attend such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in such budget. The preliminary budget shall include all funds which require the adoption of a budget and which the trustees wish to utilize during the ensuing year.

(2) The proposed expenditures adopted as the preliminary budget shall be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district shall not exceed the foundation program of such district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

(3) After the adoption of the preliminary budget by the trustees, the chairman of the trustees and the clerk of the district shall sign the budget form, and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget with all appendages and any other information required by law to the county superintendent on or before the fifth day after the fourth Monday of June.

History: **En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707.**

20-9-114. Preparation of preliminary budget by county superintendent if no budget submitted. If for any reason the trustees of any district fail to prepare and submit a preliminary budget to the county superintendent before July 10, the county superintendent shall prepare a preliminary budget for the district in the manner provided by law and shall note on the budget form the specific reasons why he has prepared it. For all purposes thereafter, such preliminary budget shall be considered to have been adopted by the trustees of the district in the regular manner.

History: **En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.**

20-9-115. Notice of preliminary budget filing and final budget meeting. Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state the time and place that the trustees will meet on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

History: **En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979.**

20-9-116 through 20-9-120 reserved.

20-9-121. County treasurer's statement of cash balances and bond information. (1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district and the amount of the outstanding obligations against each fund at the close of the last completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information shall be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement shall be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent who shall attach such district statements to the applicable district's preliminary budget.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710.

20-9-122. Statement of district, city, and town valuations. (1) By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in such completed assessment book.

(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

(3) In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711.

20-9-123. County superintendent's estimates of revenue and supply of other financial and statistical information. Before the fourth Monday of July, the county superintendent shall prepare estimates of the revenue available to finance each fund included on each district's preliminary budget. The preliminary budget revenue estimates shall be entered by the county superintendent in the appropriate portion of the form. The county superintendent shall also enter any other financial and statistical information which is necessary for the completion of the budget form and which is available prior to the fourth Monday of July.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

20-9-124 through 20-9-130 reserved.

20-9-131. Final budget meeting. (1) On the fourth Monday in July, at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of such district or on any item or amount contained in such budget.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979.

20-9-132. Final budget adjustment procedures. At the final budget meeting of the trustees, they shall have the power to make any changes or corrections they may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the trustees shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714.

20-9-133. Adoption and expenditure limitations of final budget. (1) When the trustees have caused the amount of an item of the budget for the district to be determined and set, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year.

(2) The trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations, except that transfers from any appropriation item to another

appropriation item within a fund's budget may be made as provided by law. Expenditures made, liabilities incurred, or warrants issued in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716.

20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 1;

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1; and

(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979.

20-9-135 through 20-9-140 reserved.

20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303, the district's permissive levy amount as provided in 20-9-352, and any additional levies authorized by the electors of the district under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated state impact aid received under the provisions of 20-9-304;

(v) anticipated interest to be earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(vi) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total levy requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926.

20-9-142. Fixing and levying taxes by board of county commissioners. On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717.

20-9-143. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of Title I of Public Law 81-874 or funds designated in lieu of such federal act by the congress of the United States may be allocated to the various operating budgets of the district by the trustees.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718.

20-9-144 through 20-9-150 reserved.

20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district the final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the number of mills which need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills which need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of

each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August.

History: Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721.

20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the second Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in such board's county at the number of mills for each such levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722.

20-9-153 through 20-9-160 reserved.

20-9-161. Definition of emergency for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "emergency" for the purpose of school budgeting shall be:

(1) an increase in the enrollment of an elementary or high school district over the immediately preceding school fiscal year which is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the then-current school fiscal year whenever, because of such enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or any act of God, to such an extent as to render such school property unfit for its present school use;

(3) a judgment for damages against the district rendered by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(5) any other reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district or by the board of regents upon petition by the trustees of a community college district.

History: En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979.

20-9-162. Authorization for emergency budget adoption. Emergency budgets may be adopted at any time of the school fiscal year, except that emergency budgets required by an enrollment increase that could not have been anticipated at the time of the adoption of the regular budget as provided in 20-9-161(1) may not be adopted until after December 31.

History: En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724.

20-9-163. Resolution for emergency budget — petition to superintendent of public instruction or to the board of regents. (1) Whenever the trustees of any district decide that an emergency exists, they may adopt a resolution proclaiming such emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting. The emergency resolution shall also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in subsections (1), (2), (3), or (4) of 20-9-161, they shall petition the superintendent of public instruction or, in the case of a community college district, the board of regents for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet such emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction or the board of regents. The petition shall be signed by each trustee.

(3) The superintendent of public instruction or, in the case of a community college district, the board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may then adopt a resolution of emergency and may subsequently take all other steps required for the adoption of an emergency budget. Approval of a petition by the superintendent of public instruction or the board of regents shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve the trustees of the necessity of complying with the requirements of the school emergency budgeting laws. Approval of the petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979.

20-9-164. Notice of emergency budget resolution. A copy of the emergency resolution shall be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution shall be posted at each schoolhouse of the district. A copy of the emergency resolution shall also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution shall be done not less than 1 week before the day specified in the resolution for the consideration and adoption of an emergency budget.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726.

20-9-165. Emergency budget limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt an emergency budget shall be open to the public, and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

(e) In the case of a community college district, by budget amendment in accordance with 20-15-302.

(3) In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. In the case of a community college district, copies of the emergency budget shall

be sent to the county superintendent, the county treasurer, and the board of regents.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979.

20-9-166. State financial aid for emergency budgets. Whenever a final emergency budget has been adopted for the general fund or the transportation fund to finance the cost of an emergency due to an increased enrollment or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the foundation program or for state transportation reimbursement, or both. The superintendent of public instruction shall publish rules for such application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with this section. When the superintendent of public instruction approves an application, he shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement which will be made available to the applicant district because of the emergency caused by an increase in enrollment. The superintendent of public instruction shall notify the applicant district of his approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse such emergency state aid to the eligible district at the time the next regular state aid payment is made.

History: En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729.

20-9-167. Determination of available financing — fixing and levying property taxation for an emergency budget. (1) After the last day of the school fiscal year for which an emergency budget has been adopted, the county treasurer shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund shall be determined by deducting from the county treasurer's year-end cash balance for such fund the outstanding or registered warrants issued under the regularly adopted final budget for such fund and the cash reserve for such fund which the trustees have established, within the limitations of law, for the following school fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial status of each fund included on an emergency budget for a district having such a budget during the preceding year to the board of county commissioners by the first Monday in August. Such statement for each district emergency budget shall include:

(a) the total amount of the issued emergency warrants that are outstanding or registered against each fund of the district;

(b) the amount of the cash balance in each fund included on the emergency budget which is available to finance such outstanding or registered warrants; and

(c) after consideration of the available money in subsection (2)(b), the additional amount of money which is required to finance the outstanding warrants or registered warrants and interest on such warrants and which must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(c) of the county treasurer's statement, the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.

Part 2

Administration of Finances

20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any money from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, postsecondary vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any money on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature shall be nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. The superintendent of public instruction has general supervisory authority over the school financial administration provisions, as they relate to elementary and high school districts, as prescribed by law and shall establish such rules as are necessary to secure compliance with the law.

History: (1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd. Sec. 22, Ch. 392, L. 1979.

20-9-202. County officials for financial administration when joint district. (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

20-9-203. Examination of district accounting records. (1) The accounting records of all first- and second-class school districts and third-class school districts that maintain a high school shall be audited annually by the department of community affairs in accordance with 2-7-503.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the county superintendent and the county clerk and recorder.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 336, L. 1979, provided: "This act is effective upon passage and approval." Approved March 27, 1979.

20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979.

20-9-205. Prohibition on division of contracts to circumvent bid requirements. (1) Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

20-9-206. Entering appropriations on accounting records of county treasurer. (1) When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

(2) Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809.

20-9-207. Documentation of expenditures. (1) The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1.

20-9-208. Transfer among appropriation items of a fund. (1) Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812.

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. All appropriations for a budgeted fund in the regular or emergency budget for a given school fiscal year shall lapse on the last day of such school fiscal year except the appropriations for uncompleted improvements in progress of construction. Any lawful claim presented to the district for payment under a lapsed appropriation shall be an obligation of the budget for the next ensuing school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813.

20-9-210. Expenditure limitation and cash retention of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund shall be the amount of cash balance of such nonbudgeted fund. The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this title.

History: En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814.

20-9-211. Annual financial report of county superintendent. No later than September 1 of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. Such reports shall be prepared on forms provided by the superintendent of public instruction.

History: En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804.

20-9-212. *(Temporary)* **Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs;

(g) the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners; and

(h) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance.

20-9-212. *(Effective July 1, 1980)* **Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; and

(g) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such

revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district;

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance; and

(11) remit promptly to the state treasurer receipts for the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners.

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 682, L. 1979, provided: "This act is effective on July 1, 1980."

20-9-213. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in savings or time deposits in a state or national bank, building or loan association, or savings and loan association insured by the FDIC or the FSLIC located in the county in which the district is located; provided, however, that if no such bank, building and loan association, or savings and loan association is located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties or in direct obligations of the United States government, payable within 180 days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of

bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district.

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806.

20-9-214. Fees. The trustees of any district may require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used.

History: En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322.

20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 25 years.

History: En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979.

20-9-216 through 20-9-220 reserved.

20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants shall identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn;

(b) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn; and

(c) the warrant as an emergency warrant if it is drawn on an emergency budget.

(2) Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section must not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a

positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee, the duplicate shall be sent immediately to the county treasurer, and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979.

20-9-222. Recording and payment of warrants by county treasurer. (1) Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

(2) Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

(3) After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

(4) Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

20-9-223. Cancellation of outstanding warrants — duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been cancelled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

20-9-224. Credit of refund — refund of revenue not charged against spending authority. (1) Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

(2) A refund of revenue previously received by a school district shall not be charged against a school district's spending authority.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

Part 3

Equalization Aid

20-9-301. Purpose and definition of foundation program and general fund. (1) A uniform system of free public schools sufficient for the education of and open to all school age children of the state shall be established and maintained throughout the state of Montana. The state shall aid in the support of its several school districts on the basis of their financial need as measured by the foundation program and in the manner established in this title.

(2) The principal budgetary vehicle for achieving the minimum financing as established by the foundation program shall be the general fund of the district. The purpose of the general fund shall be to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this title.

(3) The amount of the general fund budget for each school fiscal year shall not exceed the financing limitations established by this title but shall be no less than the amount established by law as the foundation program. The general fund budget shall be financed by the foundation program revenues and may be supplemented by the permissive levy and additional voted levies in the manner provided by law.

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901.

20-9-302. School isolation. (1) The trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB shall annually apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by May 1 each year. Such application shall include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before May 15. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608.

20-9-303. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount — nonisolated school foundation program financing — special education funds. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures, as established herein, that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund. It shall be financed by:

(a) county equalization moneys;

(b) state equalization aid; and

(c) when required, moneys from an additional state levy for a state deficiency.

(2) The dollar amount of the foundation program shall be 80% of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in 20-9-316 through 20-9-321. The foundation program of an elementary school having an ANB of nine or fewer pupils which is not approved as an isolated school under the provisions of 20-9-302 shall be 80% of the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a

school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title. The unexpended balance of the special education accounting budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906.

20-9-304. Eligibility for and payment of state impact aid. Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:

(1) An "employee" means an employee of a public institution under the administration of the department of institutions, as defined in 53-1-202, who resides on the property of such a public institution.

(2) A school district shall receive annually from moneys available for state equalization aid $150 for each elementary pupil and $250 for each high school pupil whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules prescribed by the superintendent of public instruction.

(4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925.

20-9-305. Proration and calculation of foundation program for a joint district. (1) In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(a) Divide the joint district foundation program by the ANB of the joint district to determine the per-ANB amount of the foundation program.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties shall equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the foundation program determined in subsection (1)(a) by the ANB for each county's portion as determined in subsection (1)(b) to determine the portion of the foundation program for each county.

(2) The portion of a joint district foundation program for each county, as determined in subsection (1)(c) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927.

20-9-306 through 20-9-310 reserved.

20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year and by dividing such total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, such total shall be calculated in accordance with the provisions of 20-9-805. Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117 prior to January 1, 1974, or pursuant to 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half of a day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case shall the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated individually for each school, except that when:

(a) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(b) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(c) a middle school has been approved and accredited, in which case pupils below the 7th grade shall be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils shall be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979.

20-9-312. Maximum general fund budget for grades seven and eight. The ANB calculated for grades 7 and 8 shall be funded at the high school rate provided that the school meets the standards for accreditation of a middle school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB is determined from the high school schedule using the total ANB of the elementary school. To determine the total ANB of such an elementary school, the 7th and 8th grade pupils shall be included in such total.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979.

20-9-313. *(Temporary)* **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for such school shall be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring

district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in 20-9-311, in a given school year will no longer be considered a special full-time pupil in the ensuing school year (the superintendent of public instruction may grant one ANB for such pupil for the ensuing school year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction.

20-9-313. *(Effective July 1, 1980)* **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for such school shall be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of

public instruction and shall be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in 20-9-311, in a given school year will no longer be considered a special full-time pupil in the ensuing school year (the superintendent of public instruction may grant one ANB for such pupil for the ensuing school year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 334, L. 1979, provided: "This act is effective on July 1, 1980."

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by 180. The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(2) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(3) No later than May 10, the district shall submit its application for an unusual enrollment increase to the superintendent of public instruction. Such application shall include:

(a) the previous year's average number belonging;

(b) the estimate of the current school fiscal year's average number belonging, as provided in subsection (1) above;

(c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection (2) above; and

(d) any other information or data that may be requested by the superintendent of public instruction.

(4) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase which the estimated average number belonging for the ensuing fiscal year is over the current year's average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (6) if the increase in subsection (4)(a) is at least 6%.

(5) The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

(6) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing school fiscal year shall be 80% of the difference between the approved estimated average number belonging for the ensuing school fiscal year and 106% of the current year's average number belonging. The amount so determined shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program.

(7) Any equalization or entitlement increases resulting from provisions of this section shall be reviewed at the end of the ensuing school fiscal year. If the actual average number belonging is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements shall be overpayments subject to the refund provisions of 20-9-344(3).

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979.

20-9-315. Maximum general fund budget and exceptions. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in 20-9-316 through 20-9-321, except when a district has adopted an emergency general fund budget under the provisions of 20-9-165 or when a district satisfies the requirements of 20-9-353.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979.

20-9-316. Elementary school maximum budget schedule for 1979-80. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $12,002 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $12,002 plus $501.60 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $16,516 plus $501.60 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $26,665 plus $314.10 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,165 shall be decreased at the rate of $1.13 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,097 shall be decreased at the rate of $1.03 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $890.60 for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 690, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

20-9-317. High school maximum budget schedule for 1979-80. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be $68,373.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum $2,849 shall be decreased at the rate of $15.54 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of $2,600 shall be decreased at the rate of $15.54 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of $1,668 shall be decreased at the rate of $2.60 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of $1,408 shall be decreased by $1.43 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of $1,265 shall be decreased at the rate of 26 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed $1,186 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 690, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

20-9-318. Elementary school maximum budget schedule for 1980-81 and succeeding years. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $13,202 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $13,202 plus $551.70 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $18,168 plus $551.70 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $29,006 plus $345.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,282 shall be decreased at the rate of $1.25 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,207 shall be decreased at the rate of $1.12 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $979.60 for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch.

518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 690, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

20-9-319. High school maximum budget schedule for 1980-81 and succeeding years. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be $75,210.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum $3,134 shall be decreased at the rate of $17.09 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of $2,860 shall be decreased at the rate of $17.09 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of $1,835 shall be decreased at the rate of $2.86 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of $1,549 shall be decreased by $1.57 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of $1,392 shall be decreased at the rate of 28 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed $1,305 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 690, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

20-9-320. Maximum general fund budget for junior high school. (1) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by 20-9-317 and 20-9-319, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the 7th and 8th grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (1)(a) by the ANB calculated in subsection (1)(b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (1)(c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

(2) The general fund budget amount determined for each school of a district under the schedules provided in 20-9-316 through 20-9-319 shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19).

20-9-321. Maximum general fund budget for special education. (1) For the purpose of establishing the maximum-budget-without-a-vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this part, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(4) The sum of the previous year special education expenses as defined in subsection (3) above and the maximum-budget-without-a-vote for current year special education as defined in subsections (1) and (2) shall be the special education budget for accounting purposes.

(5) The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total maximum-budget-without-a-vote for the district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22).

20-9-322 through 20-9-330 reserved.

20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 25 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy of 25 mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of 17-3-213;

(b) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(c) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(d) all moneys which are paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(e) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(f) any federal or state moneys distributed to the county as payment in lieu of the property taxation established by the county levy required by this section.

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912.

20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title shall be collected by the action of a court of competent jurisdiction and shall be paid into the county elementary equalization fund as provided by 20-9-331(2)(d). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, the following reports shall be made to the county superintendent of the county in which each court or justice of the peace shall have jurisdiction:

(1) during the month of September, each justice of the peace shall report all fines imposed and collected during the preceding year, indicating the type of violation and the date of collection; and

(2) at the close of each term, the clerk of each district court shall report all fines imposed and collected during the term, indicating the type of violation and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302.

20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 15 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy for 15 mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section.

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913.

20-9-334. Apportionment of county equalization moneys by county superintendent. The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a quarterly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the quarterly apportionments, he shall:

(1) deduct from the revenues available in the basic county tax account the amount required for the quarter to pay the county's obligation for elementary transportation reimbursements; and

(2) deduct from the revenues available in the basic special tax for high schools account the amount required for the quarter to pay the county's obligation for high school out-of-county tuition.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914.

20-9-335. Formula for apportionment of county equalization moneys. (1) After making such deductions prescribed in 20-9-334, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(a) determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts;

(b) multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1)(a) above to determine the portion of the county equalization moneys available to each public elementary district.

(2) The above procedure shall also be applied for public secondary districts.

(3) No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

(4) When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of 20-9-331(2)(e) or 20-9-333(2)(a).

(5) The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915.

20-9-336 through 20-9-340 reserved.

20-9-341. Definition of interest and income moneys. (1) As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907.

20-9-342. Deposit of interest and income moneys by state board of land commissioners. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the earmarked revenue fund for state equalization aid, provided for by 20-9-343, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908.

20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The following shall be paid into the earmarked revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 62 ½% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same earmarked revenue fund.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979.

20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution. (1) Except as provided in 20-9-345, the moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of community affairs.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917.

20-9-345. Distribution of excess state equalization moneys. Moneys appropriated for foundation program purposes are exempt from the provisions of 17-2-108. Moneys appropriated for foundation program purposes shall be expended to as great an extent as possible, irrespective of the availability of foundation program revenues from other sources. Any unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the fiscal year shall be transferred to the state permissive school levies earmarked revenue account for the purpose of reducing the statewide levy for public school permissive levy deficiency requirements.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1.

20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing each district's annual entitlement to state equalization aid, based on the data reported in the budget for each district that has been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying such verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) recommending to the board of public education the annual entitlement of all districts to state equalization aid to enable the board of public education to order the distribution of state equalization aid;

(3) distributing by state warrant the state equalization aid, for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of public education;

(4) keeping a record in his office of the full and complete data concerning moneys available for state equalization aid and the entitlements for state equalization aid of the several districts of the state;

(5) reporting to the board of public education the estimated amount which will be available for state equalization aid; and

(6) reporting to both branches of the state legislature in any year when a session is convened:

(a) the figures and data available in his office concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of such available moneys but not yet distributed; and

(d) the latest estimate of accruals of moneys available for state equalization aid.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918.

20-9-347. Formula for state equalization aid apportionment. (1) The superintendent of public instruction shall apportion the state equalization aid, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in such county (excluding state moneys available for state equalization aid) is of the total amount of the foundation programs of all districts of such county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) shall not be entitled to an apportionment of the state equalization aid.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total moneys available to all remaining counties in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all such remaining counties.

(e) Each district of each remaining county shall be entitled to an apportionment of the state equalization aid which shall be the difference between the percentage determined in subsection (1)(d) and the percentage determined for such county in subsection (1)(b) multiplied by the foundation program amount for such district.

(2) The superintendent of public instruction shall supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid to the several districts of the county, and the state equalization aid shall be apportioned to such districts in accordance with such report.

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919.

20-9-348. Estimation of state equalization level and state equalization aid for budget purposes. (1) The apportionment of state equalization aid shall be the third source of revenue in calculating the financing of the elementary district foundation program, and it shall be the second source of revenue in calculating the financing of the high school district foundation program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the superintendent of public instruction shall annually estimate a uniform percentage of each district's foundation program which state foundation program revenues and county equalization moneys, together, will be capable of financing. Such estimate shall be called the "state equalization level" and shall be based on the best available data and calculated according to the allocation procedure provided in 20-9-347.

(2) The superintendent of public instruction shall notify each county superintendent of the state equalization level estimate by July 1. The county superintendent shall use such estimated state equalization level in establishing the budget estimate of the financing available for each district's foundation program for the ensuing school fiscal year.

History: En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920.

20-9-349 and 20-9-350 reserved.

20-9-351. Additional state levy for state deficiency. (1) If the estimated state equalization level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of the director of the department of revenue to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the state as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the state.

(2) The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

(a) determine the total amount required from this source of revenue by the several elementary or high school districts of the state;

(b) determine the total amount of moneys available for this source of revenue;

(c) calculate the percentage the amount determined in subsection (2)(b) is of the amounts determined separately in subsection (2)(a) for all elementary or all high school districts;

(d) multiply each elementary district or each high school district requirement for this source of revenue by the percentage calculated in subsection (2)(c).

(3) When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's additional state levy for elementary schools or high schools or, if there is no additional state levy under this section, the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.

(4) The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency", and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

(5) The superintendent of public instruction shall compute the budgeted requirement for this source of revenue for each district and shall supply the total state requirements for the elementary district foundation programs and the high school district foundation programs to the director of the department of revenue on the second Monday of August.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921.

20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 9 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 9 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 6 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsections (3) and (4) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the revenue collected is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M 1947, 75-6922.

20-9-353. Additional levy for general fund — election for authorization to impose. (1) The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district.

(2) However, when the trustees adopt a total general fund budget which exceeds 110% of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget.

(3) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that no election shall be required to permit the school trustees to use federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget as established in 20-9-316 through 20-9-321 by the amount of these funds. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

"PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy."

(4) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

(5) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979.

Part 4

School Bonds

20-9-401. Applicable laws for school district bonding. (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

(a) the issuance, refunding, and sale of school district bonds;

(b) the levying of taxes for payment of the principal and interest on school district bonds; and

(c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

20-9-402. Definition of school district for bonding purposes. For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district, high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:

(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102.

20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes, including postsecondary vocational-technical centers in the school district;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district.

(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103.

20-9-404. Contracts and bonds for joint construction. The trustees of a school district may enter into a contract with the trustees of any school district within the county or with any school district in an adjoining county to provide for the joint construction of vocational-technical secondary schools upon such terms and conditions as may be mutually agreed upon between such districts. The trustees of any district executing a contract in accordance with this section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1.

20-9-405. Proportional joint ownership — disposition of moneys. The vocational-technical secondary school constructed under 20-9-404 shall be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The sale or other disposition of a district's interest in the school shall be made in accordance with 20-6-604. Moneys received from the sale or disposition of a district's interest in a vocational-technical secondary school shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2.

20-9-406. Limitations on amount of bond issue. (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 29% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The 29% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district. All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the 29% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(3) Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2).

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 29% limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of 29% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in this section. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979.

Compiler's Comments

Commissioner correction. In subsection (1), "this section" was changed to "20-9-406" by the Code Commissioner, 1979. Sections 20-9-406 and 20-9-407 were enacted as part of one section and were split during recodification. The internal reference to "this section" was overlooked and has now been corrected.

20-9-408. Definition of forms of bonds. As used in this title, unless the context clearly indicates otherwise:

(1) "amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

(2) "serial bonds" means the form of bonds which are payable in annual installments and on which the amount to be redeemed each year is determined by dividing the total amount of the bonds by the term of the bond issue. However, the first or the first and second installments may vary from the others to the extent resulting from fixing the amounts of each bond of the other installments at $100, at $500, or at some multiple thereof.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105.

20-9-409. Form of bond to be issued. All bonds issued by a school district shall be amortization bonds unless serial bonds, in the judgment of the trustees, will be more advantageous to the school district and can be sold at a comparatively reasonable rate of interest.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

20-9-410. Limitation of term and interest — timing for redemption. School district bonds shall not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than 5 years shall be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds. The interest shall not exceed 7% per annum and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107.

20-9-411. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

20-9-412. Issuance of refunding bonds without an election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue bonds for such purpose, the trustees, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of such resolution, the trustees shall give notice of the sale of such new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election. Such new bonds shall be sold in open competitive bidding, by written bids or by sealed bids. Bonds shall not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least ½ of 1% per annum less than the rate of interest in the bonds to be refunded or redeemed.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109.

20-9-413 through 20-9-420 reserved.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district shall not issue bonds for any purpose other than that provided in 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110.

20-9-422. Additional requirements for trustees' resolution calling bond election. In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election shall:

(1) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

(2) fix the maximum number of years in which the proposed bonds would be paid; and

(3) in the case of initiation by a petition, state the essential facts about the petition and its presentation.

History: En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111.

20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds shall:

(1) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

(2) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

(3) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they shall be fastened together to form a single petition when submitted to the county registrar;

(4) be circulated by any one or more qualified electors of the school district; and

(5) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition he circulated. Such affidavit shall attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112.

20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse thereon a certificate which shall state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and his certificate to the school district. The county election administrator shall not receive compensation for the examination of school district bond petitions.

History: En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-9-425. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

History: En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.

20-9-426. Preparation and form of ballots for bond election. The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of .... dollars ($....), bearing interest at a rate not more than seven percent (7%) per annum, payable semiannually, during a period not more than .... years, for the purpose .... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.
☐ BONDS — NO.

History: En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115.

20-9-427. Notice of bond election by separate purpose. (1) Any school district bond election shall be conducted in accordance with the school election provisions of this title, except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the .... day of ...., A.D., 19.., an election of the registered electors of School District No. .... of .... County, state of Montana, will be held on the .... day of ...., A.D., 19.., at .... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of .... dollars ($....), bearing interest at a rate not more than seven percent (7%) per annum, payable semiannually, for the purpose of .... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding .... (state number) years.

The polls will be open from .... o'clock ....m. and until .... o'clock ....m. of the said day.

Dated and posted this .... day of ...., A.D., 19...

....
Chairman, School District No....
of .... County
Address........................

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice, together with the proposed amount of bonds therefor.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116.

20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;

(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;

(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and

(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of such proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for such school district bond election.

History: En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117.

20-9-429. Trustees' resolution to issue school district bonds. Within 60 days after the date of the election certificate or as soon thereafter as is practical in the judgment of the trustees, the trustees shall adopt a resolution providing for the issuance of bonds of the school district. Such resolution also shall specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the maximum rate of interest;

(4) the purpose or purposes of the issue;

(5) the date the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) that amortization bonds will be preferred but also fix the denomination of serial bonds; and

(9) the date and time that the sale of the bonds shall be conducted.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118.

20-9-430. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of...., 19.., at the hour of .... o'clock ....m. at ...., in the school district, sell to the highest and best bidder for cash either amortization or serial bonds of the school district in the total amount of .... dollars ($....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, the sum of .... dollars ($....) of the serial bonds will become payable on the .... day of ...., 19.., and the sum of .... dollars ($....) will become payable on the same day each year thereafter until all of the bonds are paid.

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 7% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of .... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

....
Chairman, School District No. ...
of .... County
Address: ....

ATTEST: Subscribed and sworn to before me this .... day of ....., 19...; .... Notary Public for the State Residing at ...., Montana. My Commission expires ....

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119.

20-9-431. Publication of notice of sale of school district bonds. (1) The trustees shall cause a copy of the notice of sale of the bonds to be:

(a) published once a week for 4 successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

(b) published once, not less than 30 days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is $10,000 or more; and

(c) sent to the board of investments.

(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979.

20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district, except that such bonds shall not be sold at less than par and accrued interest.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues if, in the opinion of the trustees, such cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121.

20-9-433. Form and printing of school district bonds. (1) It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation. (1) When the school district bonds have been duly executed by the chairman of the trustees and the school district clerk, all such bonds shall be registered by the county treasurer in his bond registration book before such bonds are delivered to the purchaser. The bond registration shall show:

(a) the number and amount of each bond;
(b) the date of issue;
(c) the redeemable date of each bond;

(d) the name of the purchaser; and

(e) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: **En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123.**

20-9-435. Delivery of school district bonds and disposition of sale moneys. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased such bonds, forward the bonds to such state board which, in turn, shall cause the bonds to be sent to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or

(b) when the purchaser is anybody other than the board of investments, deliver the bonds to such purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of any bonds, he is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years.

(3) All money realized from the sale of school district bonds shall be paid to the county treasurer, and he shall credit such money to the building fund of the school district issuing the bonds, except money realized for the purposes defined in 20-9-403(1)(c) and (1)(d) shall be deposited in the debt service fund for the purchase of such bonds. The money realized from the sale of school district bonds shall be immediately available to such school district, and the trustees may expend such money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by such investment shall be used in the manner provided therein. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from such bond issue shall be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of such issue.

History: **En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979.**

20-9-436. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, he shall carefully examine such transcript, and the transcript may not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties.

History: **En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979.**

20-9-437. School district liable on bonds. The full faith, credit, and taxable resources of every school district issuing bonds under the provisions of this title are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this part enforceable, every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the trustees of such school district.

History: **En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126.**

20-9-438. Preparation of debt service fund budget. The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. The trustees shall also include in the debt service fund of the preliminary budget the amount of money necessary to pay the special improvement district assessments levied against the school district which become due during the ensuing school fiscal year. The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district.

History: **En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127.**

20-9-439. Computation of net levy requirement — procedure when levy inadequate. (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) determine the total moneys available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year cash balance, less any outstanding warrants in the debt service fund;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other moneys anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income;

(b) the total amount available to reduce the property tax, determined in subsection (1)(a), shall be subtracted from the final budget expenditure amount for the debt service fund as established in 20-9-438;

(c) the net debt service fund levy requirement determined in subsection (1)(b) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142.

(2) If the board of county commissioners shall fail in any school fiscal year to make a levy for any issue or series of bonds of any school district sufficient to raise the moneys necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in such amounts as are established under the provisions of this section, the holder of any bond of such issue or series or any taxpayer of the district may apply to the district court of the county in which such school district is located for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes. If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in such school district that is sufficient to raise the amount of such deficiency. Such levy shall be in addition to any levy required to be made at that time for the then-ensuing school fiscal year. Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners and shall not be a charge against the school district or the county.

History: **En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128.**

20-9-440. Payment of debt service obligations — termination of interest. (1) The county treasurer shall maintain a separate debt service fund for each school district and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as the same become due. If the bonds are held by the state of Montana, then all payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal

to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due shall draw interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129.

20-9-441. Redemption of bonds — investment of debt service fund moneys. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that on such interest due date such bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bonds and any unpaid coupons of such bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying, but in no case exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money

shall be invested by the trustees under the provisions of 20-9-213(4). Such investments shall be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979.

20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district when such payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file such canceled coupons and bonds in his office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131.

20-9-443. Disposition of remaining debt service fund. When all of the bonds and bond interest of any school district have been fully paid, all money remaining in the debt service fund for such school district and all moneys which may come into such debt service fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

History: En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132.

20-9-444. Liability of officers for failure to provide fund for payment of bonds. When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

History: En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.

20-9-445. Liability for misuse of bond payment fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.

20-9-446. Duty of county attorney to prosecute. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

20-9-447 through 20-9-450 reserved.

20-9-451. County bonding for county high school not placed in high school district. Sections 20-9-452 through 20-9-456 shall be used for the purposes of indebting a county for county high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission of the county. The provisions of such sections shall not be available to any county high school that has been placed in a high school district or to any other high school or district.

History: En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.

20-9-452. Purposes and petition for county high school bonds. (1) Any county where a county high school that has not been placed in a high school district is located may become indebted by the issuance of bonds for the purposes of:

(a) purchasing or erecting a building or buildings for high school purposes;

(b) remodeling, enlarging, or repairing a building or buildings for high school purposes;

(c) purchasing equipment for high school purposes;

(d) purchasing, erecting, or equipping a high school dormitory or gymnasium;

(e) purchasing a suitable site or sites for such high school building; or

(f) refunding or redeeming any outstanding bonds originally issued for any of the foregoing purposes.

(2) In order to initiate any bonding proposition for the above purposes, a petition signed by not less than 20% of the electors of the county who are qualified under 20-20-301 shall be presented to the trustees of the county high school. Such petition shall request the submission of a bond proposition to the qualified electors of the county and shall specify the purpose or purposes of the proposed bond issue and the amount of bonds to be issued. Such petition shall conform with the petition requirements prescribed in 20-9-423. If the trustees of the county high school approve a validated petition for a bond proposition, they shall request the board of county commissioners of the county to submit such bond proposition to the qualified electors of the county.

History: En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134.

20-9-453. Duty of board of county commissioners to call election and issue bonds. Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county in the manner otherwise provided by law for the submission of the proposition of the issuance of other county bonds. If a majority of the qualified electors of the county voting upon the proposition so submitted shall approve such issue, then the board of county commissioners shall issue and market the bonds authorized as in the case of other county bonds.

History: En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.

20-9-454. Proration of county bond proceeds between high schools of the county. In any county where a county high school is located and such county high school is not located in a county that has been divided into high school districts and another high school is maintained by an elementary district of the county, bonds of the county may likewise be issued in accordance with the provisions of 20-9-452 and 20-9-453. The proceeds of such issue shall be divided among the county high school and the districts maintaining a high school. The question submitted to the electors of the county shall state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among such districts. In all such cases, the amount allotted to the county high school and the amount to be apportioned among the districts shall be computed upon the basis of the taxable valuation of the county that is used for county high school property taxation purposes and the taxable valuation of the districts maintaining a high school. Any such bond moneys apportioned to a district shall not be expended until the purpose for the expenditure has been approved by a vote of the qualified electors at an election held in the same manner prescribed for a school district bond election.

History: **En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.**

20-9-455. Payment of county bonds. All bonds authorized and issued for a county high school not located in a high school district shall be paid, both principal and interest, in the manner provided by law for the payment of other bonds of the county.

History: **En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.**

20-9-456. Budget prohibition when county bonds issued. In all cases where bonds of the county are issued for county high school purposes, the trustees of the county high school shall not budget for any item of expense or disbursement for the purposes for which such county bonds have been issued.

History: **En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.**

20-9-457 through 20-9-460 reserved.

20-9-461. Purpose. Sections 20-9-461 through 20-9-464 are intended to improve the marketability of bonds issued by school districts in order that said bonds may be sold upon the most favorable terms.

History: **En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part).**

20-9-462. Bond issue proceedings to be submitted to attorney general. The governing body of any school district shall submit a certified copy of all proceedings preliminary to such bond issue to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to examination and validity.

History: **En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).**

20-9-463. Attorney general to report as to validity of bonds. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district which may be submitted to him for such examination, and if found regular and valid, he shall deliver to the recording officer of such district a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds, and a notation thereof shall be entered in the bond register.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).

20-9-464. Statute of limitations — action to test validity. No bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of said bonds, unless an action to contest the validity thereof shall be brought within 30 days after the date of sale.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part).

20-9-465. Action to restrain bond issue — time for bringing. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

Part 5

Special Purpose Funds

20-9-501. Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and

(ii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special educational cooperative agreement levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special educational cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the

net retirement fund levy for each county in the same manner as provided in 20-9-152.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979.

20-9-502. Purpose and authorization of a building reserve fund by an election. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than 5% of the value of the taxable property of the district. Such limitation shall be determined in the manner provided in 20-9-406. A building reserve tax authorization shall not be for more than 20 years.

(3) The election shall be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election shall be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition shall be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.
☐ BUILDING RESERVE—NO.

(4) The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the

trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205.

20-9-503. Budgeting, tax levy, and use of the building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include such authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report such amount as the building reserve fund levy requirement to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund shall have the authority to expend moneys from such fund for the purpose or purposes for which it was authorized without such specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. Such expenditures shall not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest such money in accordance with 20-9-213(4). The interest earned from the investment shall be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for such fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206.

20-9-504. Extracurricular fund for pupil functions. (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the department of community affairs shall be implemented by the trustees. Such accounting system shall provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323.

20-9-505. Purpose and establishment of nonoperating fund. (1) The trustees of any district that will not operate any school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of such school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year cash balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, cash balances of the debt service fund and the miscellaneous federal programs fund, if any, shall be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund cash balance as a nonoperating fund cash reserve when they anticipate the reopening of a school in the following school fiscal year. Such cash reserve shall not be more than the general fund cash reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund cash reserve shall terminate and the moneys earmarked as a cash reserve shall be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate such school, the nonoperating fund cash reserve shall be restored as the general fund cash reserve.

(3) The purpose of the nonoperating fund shall be to centralize the financing and budgeting for the limited functions of a district not operating a school. Such functions shall include:

(a) elementary tuition obligations to other districts;

(b) transportation of the resident pupils;

(c) maintenance of district-owned property; and

(d) any other nonoperating school function of the district deemed necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund moneys shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209.

20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. Such nonoperating budget shall contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other moneys that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on the second Monday of August, and such levies shall be made on the district by the county commissioners in accordance with 20-9-142.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210.

20-9-507. Miscellaneous programs fund. (1) The trustees of any district receiving grants of state or federal moneys other than moneys under the provisions of Title I of Public Law 81-874 or federal moneys designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of such moneys. Such moneys may be a reimbursement of expenditures already realized by the district or may be a grant of moneys for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the moneys are a reimbursement, the moneys shall be expended at the discretion of the trustees for school purposes. When the moneys are a grant, the moneys shall be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement moneys.

(2) The financial administration of the miscellaneous programs fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979.

20-9-508. Building fund. (1) The trustees of any district shall establish or credit the building fund whenever such district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing such sale;

(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;

(e) earns interest from the investment of building fund moneys under the provisions of 20-9-213(4), except interest earned from the investment of bond moneys under the provisions of 20-9-435 shall be credited to a fund in accordance with such section; or

(f) receives any other moneys for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund and shall provide for a separate accounting of the moneys realized by each bond issue or by each construction project financed by a federal grant of moneys. Any other moneys to the credit of this fund shall be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Moneys credited to the building fund under the provisions of subsection (1)(a) of this section shall be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of such bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold shall be transferred to the debt service fund to be used for the redemption of bonds of such issue.

(4) Moneys credited to the building fund under the provisions of subsection (1)(b) of this section shall be expended for the express purpose or purposes authorized by the federal government in granting such moneys.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213.

20-9-509. Housing and dormitory fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 20-6-607 may establish a housing and dormitory fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the housing and dormitory fund, genera fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a housing and dormitory fund is more than $3,000, such cash balance in excess of $3,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a housing and dormitory fund shal be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214.

20-9-510. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provision of this title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

20-9-511. Interlocal cooperative agreement fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: **En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.**

Part 6

Public School Fund and Grants to Schools

20-9-601. Public school fund. The public school fund shall be maintained by the state treasurer as a subfund in the trust and legacy fund, and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property which revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes and all moneys other than rental recovered from persons trespassing on such lands;

(7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;

(8) the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) such other moneys as may be provided by the legislature.

History: **En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301.**

20-9-602. Title to farm mortgage lands vested in state and transfers validated. (1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: **En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.**

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303.

20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of any district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund shall be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or

(e) direct obligations of the United States government.

(3) All interest collected on the deposits or investments shall be credited to the endowment fund. No portion of the endowment fund may be loaned to the district nor may any money of the fund be invested in warrants of the district.

(4) Whenever any district has been abandoned, the endowment fund of the abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on his official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309.

Part 7

Educational Cooperative Agreements

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

20-9-702. Financial administration of interlocal cooperative agreement. Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

History: En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.

20-9-703. District as prime agency. (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.

20-9-704. District as cooperating agency. (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.

20-9-705. Joint interstate school agreements. (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:

PROPOSITION

SCHOOL DISTRICT NO. ...., ... COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number .... of .... County, state of ...., for the purpose of (insert the purpose of such contract)?

☐ FOR execution of contract.
☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

Part 8

Emergency School Closure

20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days required by law by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

History: En. Sec. 1, Ch. 288, L. 1979.

Compiler's Comments

Effective date. Sec. 9, Ch. 288, L. 1979, provided: "This act is effective upon passage and approval." Approved March 26, 1979.

20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or any combination of the foregoing that acts as a principal cause for a school district's inability to conduct one or more scheduled school days.

(2) "School day" means the school day defined in 20-1-302.

(3) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year 1 week beyond the last scheduled day; or

(b) the use of scheduled vacation days.

History: En. Sec. 2, Ch. 288, L. 1979.

20-9-803. Unforeseen emergency minimum. In no case may a district be considered to have made a reasonable effort unless at least 3 school days that have been lost by reason of one or more unforeseen emergencies have in fact been made up.

History: En. Sec. 3, Ch. 288, L. 1979.

20-9-804. Determination of eligibility. If the county superintendent or, in a county with no county superintendent, the superintendent of public instruction determines that a reasonable effort has been made to make up all school days lost by reason of one or more unforeseen emergencies but fewer than the minimum number of school days required by law have been conducted, the school district will nevertheless be credited with full annual equalization apportionment according to the rate established in 20-9-805.

History: **En. Sec. 4, Ch. 288, L. 1979.**

20-9-805. Rate of reduction in annual apportionment entitlement. (1) For each school day short of the minimum number of school days required by law that a school district fails to conduct by reason of one or more unforeseen emergencies or by reason of any other cause and for which the school district is not entitled to apportionment credit, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by 1/180th.

(2) Kindergarten and grade 1 through 12 programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of apportionment.

History: **En. Sec. 5, Ch. 288, L. 1979.**

CHAPTER 10

TRANSPORTATION AND FOOD SERVICES

Part 1 — School Buses and Transportation

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20-10-104. Penalty for violating law or rules.
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20-10-123. Provision of transportation for nonpublic school children.
20-10-124. Private party contract for transportation — individual transportation contract.
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20-10-131. County transportation committee membership.
20-10-132. Duties of the county transportation committee.
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20-10-141. Schedule of maximum reimbursement by bus mileage rates.
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Part 2 — Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services moneys.
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Part 1

School Buses and Transportation

20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Transportation" shall mean:

(a) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance;

(b) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or

(c) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(2) An "eligible transportee" shall mean a public school pupil who:

(a) is not less than 5 years of age nor has attained his 21st birthday;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency and which complies with the bus standards established by the board of public education as determined by the Montana division of motor vehicles' semiannual inspection of school buses and the superintendent of public instruction.

History: (1), (2)En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3)En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part).

20-10-102. School bus requirements. (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).

20-10-103. School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

(1) he is not less than 18 years of age;

(2) he is of good moral character;

(3) he is the holder of a chauffeur's license;

(4) he has filed with the district a satisfactory medical examination report, on a blank provided by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) he has completed a standard first aid course and holds a valid standard first aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first aid course and certificate.

(6) he has complied with any other qualifications established by the board of public education; and

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section.

History: En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003.

20-10-104. Penalty for violating law or rules. (1) Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

(2) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles

traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006.

20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence shall be established on the basis of the general state residence law as provided in 1-1-215. Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with 20-5-301, 20-5-302, or 20-5-311, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016.

20-10-106. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

20-10-107. Power of trustees. The trustees of any district shall have the power to:

(1) purchase or rent a school bus;

(2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a two-way radio owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, and such contract shall not exceed the term of 5 years.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-108. Two-way radio operation. When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-109. Liability insurance for school bus. Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than $10,000 per person and $100,000 for each accident for each bus operated by or under contract with the district.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-110. School bus purchase — contract — bids. When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-111. Duties of board of public education. (1) The board of public education, by and with the advice of the Montana division of motor vehicles and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. Such policies shall:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national commission on safety education; or

(ii) minimum standards adopted by the national highway safety bureau;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses shall have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish any other driver qualifications that may be deemed necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county;

(e) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in 20-10-105;

(f) prescribe any other policies for the operation of school buses which are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national commission on safety education;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the "rated capacity".

(2) The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004.

20-10-112. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to him and rule on such controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005.

20-10-113 through 20-10-120 reserved.

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by such individual transportation as:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require such eligible transportee to ride a school bus for more than 1 hour per trip.

History: **En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008.**

20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of any district also may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from such school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. Such school bus shall service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsections (1)(a) or (1)(b) above, the district may charge each ineligible transportee his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: **En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009.**

20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district shall charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010.

20-10-124. Private party contract for transportation — individual transportation contract. (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply in every respect with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may, in contracting with private parties, require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition deemed necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district shall be under contract, and no district, county, or state money shall be paid for such transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year shall be completed by the fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation shall be subject to the following requirements:

(a) the contract shall be completed in quadruplicate and, upon completion, one copy shall be for the county superintendent, one copy for the private party, one copy for the superintendent of public instruction, and one copy shall be retained by the district;

(b) the contract terms shall require conformance to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) the contract shall be signed by the chairman of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation shall be subject to the following requirements:

(a) it shall be completed in quadruplicate and, upon approval, one copy shall be for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it shall be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of his child or children; and

(d) it shall be signed by the chairman of the trustees and the parent or guardian of the eligible transportees.

History: (1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012.

20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by more than 8% per year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947 75-7013; amd. Sec. 1, Ch. 349, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 349, L. 1979, provided: "This act is effective on its passage and approval." Approved March 28, 1979.

20-10-126 through 20-10-130 reserved.

20-10-131. County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction, there shall be a county transportation committee created in each county of the state of Montana. The membership of the county transportation committee shall be:

(a) the county superintendent;

(b) the chairman of the board of county commissioners or a member of such board designated by the chairman;

(c) a trustee or district employee designated by the trustees of each high school district of the county;

(d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of such elementary districts; and

(e) a representative of a district of another county when the transportation services of such a district are affected by the actions of the transportation committee, but such a representative shall have a voice only in matters affecting transportation within such district or by such district.

(2) The county transportation committee shall have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(d) above, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent shall be the chairman of the county transportation committee, and a quorum shall consist of a majority of the membership. The county transportation committee shall meet on the call of the chairman or any three members of such committee.

History: En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014.

20-10-132. Duties of the county transportation committee. (1) It shall be the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;

(b) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation due to isolated conditions of the eligible transportee's residence; and

(d) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

(2) After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year.

(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: **En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015.**

20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by bus mileage rates. (1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the bus is used for transportation of eligible transportees:

(a) 50 cents in fiscal 1980 and 55 cents in fiscal 1981 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of 50 cents in fiscal 1980 and 55 cents in fiscal 1981 and each year thereafter per bus mile.

(3) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch. 590, L. 1979.

20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by 18 cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), no reimbursement may be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting

3 miles from the product so obtained, and multiplying the difference by 18 cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be 1 ½ times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be $4 for one eligible transportee and $2 for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district.

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979.

20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of any district furnishing transportation to pupils who are residents of such district shall have the authority and it shall be their duty to provide a transportation fund budget that is adequate to finance such district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget shall include:

(a) an adequate amount to finance the maintenance and operation of district owned and operated school buses;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount due to isolation, which shall not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill any obligation to provide transportation in accordance with the transportation law for any pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of such district during the school fiscal year or pupils who have become eligible transportees since the adoption of the preliminary budget because their legal residence has been changed. The budgeted contingency amount shall not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by such schedule and provided by the district unless 10% of such transportation schedule amount shall be less than $100, in which case $100 shall be the maximum limitation for such budgeted contingency amount.

(3) As provided in 20-9-162, an emergency transportation fund budget may be adopted subject to the provisions of the emergency budgeting law.

(4) The transportation fund budgeted expenditures appropriated by the trustees shall be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget shall be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. Such contracts shall substantiate all contracted transportation services incorporated in the preliminary budget, and after the county superintendent has utilized the contracts for such purpose but before the fourth Monday of July, he shall send all the transportation contracts received by him to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for such services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for such deviation.

History: **En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020.**

20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget. Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(f) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142.

History: **En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021.**

20-10-145. State transportation reimbursement. (1) Any district providing school bus transportation or individual transportation in accordance with the transportation law, board of public education transportation policy, and superintendent of public instruction transportation rules shall receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement shall not exceed one-third of the reimbursement amounts established in such sections or one-third of the district's transportation fund budget, whichever is smaller, and shall be computed on the basis of the number of days the transportation services were actually rendered. In determining the amount of the state transportation reimbursement, no amount claimed by a district shall be considered for reimbursement unless such amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement shall be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements shall be routed by the district to the county superintendent, who after reviewing such claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining their compliance with the transportation law, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to such claims, he shall cause their payment by ordering a disbursement from the state moneys appropriated by the legislature of the state of Montana for the state transportation reimbursement. Such payment of all the district's claims within one county shall be made to the county treasurer of such county, and the county superintendent shall apportion such payment in accordance with the apportionment order supplied by the superintendent of public instruction.

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022.

20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with the transportation law, board of public education transportation policy, and the transportation rules of the superintendent of public instruction shall be the same as the state transportation reimbursement payment except that:

(a) the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment;

(b) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(d), the annual apportionment shall be limited to such budget amount;

(c) when a district receives a state transportation reimbursement of two-thirds the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third high school county reimbursement of the transportation of special education pupils; and

(d) when the county transportation reimbursement for a school bus has been prorated between two or more counties because such school bus is conveying pupils of more than one district located in such counties, the apportionment of the county transportation reimbursement shall be adjusted to pay the amount computed under such proration.

(2) The county superintendent shall apportion the elementary county transportation reimbursement from the proceeds of the county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation. The county superintendent shall order the county treasurer to make such apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

History: En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023.

20-10-147. Bus depreciation reserve. (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024.

Part 2

Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services moneys. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization shall apply to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th Congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit such funds to the federal and private grant clearance fund. Any disbursement of the federal school food services funds shall be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for such services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

History: En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002.

20-10-202. Records, reports, reviews, and audits. (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records shall always be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and shall be preserved for such period of time, not to exceed 5 years, as the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the audits, inspections, and administrative reviews of the financial records and the operation of school food services.

History: En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003.

20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity revolving account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of such federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the county department of welfare, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund shall be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price per meal charged the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price per meal.

(3) After the county superintendent's confirmation or adjustment of the claim, he shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006.

20-10-206. Pupils in state institutional schools included. The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: **En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.**

20-10-207. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: **En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.**

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RESERVED

CHAPTER 15

COMMUNITY COLLEGE DISTRICTS

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Part 1

General Provisions

20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term "community college district" means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to high school graduates and other persons who have terminated their formal high school education. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101.

20-15-102. Community college districts — name and corporate powers. A community college district shall be known as "Community College District of ...., Montana". In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

20-15-103. Supervision and coordination by board of regents. Community college districts shall be under the supervision and coordination of the regents. The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;

(3) formulate and put into effect general policies for the supervision and coordination of community college districts;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents' authority to supervise and coordinate and the trustees' authority to administer and control community colleges; and

(5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter.

History: (1), (6)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2) thru (5)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; amd. Sec. 25, Ch. 392, L. 1979.

20-15-104. Pecuniary interest and letting contracts. (1) It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any community college building in his district or in furnishing or repairing the same or be in any manner connected with the furnishing of supplies for the maintenance of the college or to receive or accept any compensation or reward for services rendered as trustee, except as herein provided.

(2) The board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than $5,000.

(b) Whenever the proposed contract costs are less than $25,000 but more than $5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than $25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county wherein the area of the district lies, calling for bids to perform such work or furnish such supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any and all bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979.

20-15-105. Courses of instruction — tuition and fees. (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: **En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119.**

20-15-106. Retirement systems for employees and teachers. (1) Teachers of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system.

History: **En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979.**

20-15-107. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: **En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.**

20-15-108. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: **En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.**

20-15-109. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

History: **En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.**

Part 2

Organization and Trustees

20-15-201. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least $10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: **En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104.**

20-15-202. Petition for organization of community college district. When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

History: En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105.

20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district shall be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the regents determine that the petition satisfies such requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. Such election shall be held on the next succeeding regular school election day, except that an election required by a petition received by the regents less than 60 days before the regular school election day shall be held at the regular school election in the following school fiscal year.

(3) At such election the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of .... (elementary districts shall be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of ...., Montana, under the provisions of the laws authorizing community college districts in Montana, as prayed in the petition filed with the Board of Regents at Helena, Montana, on the .... day of ...., 19...?

☐ FOR organization.
☐ AGAINST organization.

History: En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106.

20-15-204. Election of trustees — districts from which elected — terms of office. (1) The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven trustees shall be elected at large, except that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than 50% of the population of the proposed district, then four trustees shall be elected from such high school district or such part of high school district and three trustees at large from the remainder of the proposed community college district.

(2) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107.

20-15-205. Call for nominations of trustee candidates and notice. (1) A call for nominations of trustee candidates for the proposed community college district shall be made by the regents.

(2) Notice of the call for nominations shall be published in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district once a week for 3 consecutive weeks, the last insertion to be no less than 5 weeks prior to the date of the election. Such notice shall describe the geographical composition of the board of trustees membership, nomination procedure, and the proposal for the organization of a community college district.

History: En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.

20-15-206. Nomination of candidates and provision of sample ballot. (1) Nominations of candidates for the trustee positions must be filed with the regents at least 30 days prior to the date of the election. Any five qualified electors may file nominations of as many persons as are to be elected to the board of trustees of the proposed community college district from their respective community college trustee election areas.

(2) The regents shall provide the trustees of each district ordered to conduct the community college district organization election with a sample of the ballot for the election of the board of trustees. Such sample ballot shall be reproduced by the trustees in a sufficient number to be used as the trustee election ballot.

History: En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.

20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall be given by the regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election.

History: En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110.

20-15-208. Conduct of election. The election for the organization of the community college district and the election of trustees for such community college district shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election. The cost of conducting such election shall be borne by the districts.

History: **En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111.**

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

History: **En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112.**

20-15-210. Qualification and organization of board of trustees. (1) Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees shall be organized by the election of a chairman and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-206, 20-9-212, 20-9-222, and 20-9-224.

History: **En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979.**

20-15-211 through 20-15-218 reserved.

20-15-219. Qualifications for office of trustee — nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

History: **En. Sec. 3, Ch. 392, L. 1979.**

20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.

☐ .... List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.

☐ .... List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.

☐ .... List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

History: **En. Sec. 4, Ch. 392, L. 1979.**

20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election shall be conducted in accordance with the election provisions of this title whenever such provisions are made applicable to community college districts. Such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. The order shall be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district, including one-half of the compensation of the judges for the school elections; provided that if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979.

20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of such community college district shall tabulate the results so received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at such election.

(2) (a) No person who receives a certificate of election as a community college trustee mas assume the trustee position until he has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

History: En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; (2)En. Sec. 5, Ch. 392, L. 1979.

20-15-223. Vacancies. (1) A community college trustee position is vacant whenever the incumbent:

(a) dies;

(b) resigns; or

(c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district shall be given notice by the coordinator of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their members as chairman and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The chairman and secretary of the trustees of the community college district shall serve until the next organization meeting. The chairman shall preside at all meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in their judgment necessity requires it. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees shall constitute a quorum for the transaction of business, except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

(4) A member of the board of trustees shall receive mileage as provided for in 2-18-503 for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979.

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

(a) have general control and supervision of the community college;

(b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(c) grant certificates and degrees to the graduates of the community college;

(d) keep a record of their proceedings;

(e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;

(f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(g) have general control of all receipts and disbursements of the community college;

(h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(j) call and conduct the elections of the district in accordance with the school election chapter of this title;

(k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

History: En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979.

20-15-226. Personal liability of trustees. (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county

attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

History: En. Sec. 9, Ch. 392, L. 1979.

20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving such a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend such trustee from his trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

History: En. Sec. 6, Ch. 392, L. 1979.

20-15-228. Grounds for removal. A community college trustee may be removed whenever he:

(1) moves his residence from the applicable community college district;

(2) is no longer a registered elector of the community college district under the provisions of 20-20-301;

(3) is absent from the district 60 consecutive days;

(4) fails to attend three consecutive meetings of the trustees without reasonable cause;

(5) fails to perform responsibilities in accordance with 20-15-226; or

(6) ceases to have the capacity to hold office.

History: En. Sec. 7, Ch. 392, L. 1979.

20-15-229. Audit of district. A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

History: En. Sec. 14, Ch. 392, L. 1979.

20-15-230 reserved.

20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of one county petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district shall order an annexation election in the area defined by the petition. Such election shall be ordered within 60 days of the receipt of the petition.

(2) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(3) The proposition on the ballot shall be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.
☐ AGAINST annexation.

(4) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district.

History: **En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125.**

Part 3

Finance

20-15-301. Sources of financing for and types of capital expenditures. (1) The board of trustees of any community college district is hereby vested with the power and authority to:

(a) build, enlarge, alter, repair, or acquire by purchase school buildings and dormitories;

(b) furnish and equip such buildings;

(c) purchase sites for such buildings;

(d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

(2) The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section and to repay such obligations from the various revenues of the college.

History: **En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122.**

20-15-302. Budget — approval. (1) The board of trustees of a community college district shall adopt an annual operating budget for the general maintenance and operation of the community college district. The budget shall be submitted to the regents of the state of Montana for their approval. The budget approved by the regents shall be the budget of the community college district submitted to the state budget director in accordance with Title 17, chapter 7.

(2) In the case of an emergency budget as defined in subsections (2) through (5) of 20-9-161, the community college district must receive an approved budget amendment from the board of regents in a manner and on forms prescribed by the board of regents.

History: **En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.**

20-15-303. Financing budget. (1) The annual operating budget of a community college district shall be financed at a 65:35 state-to-local ratio as defined by the board of regents in the order enumerated below:

(a) the estimated revenue to be realized from student tuition and fees as approved by the board of trustees;

(b) a mandatory mill levy on the community college district that when combined with subsection (1)(a) of this section will provide 35% of the annual budget approved by the board of regents;

(c) the total of the revenues expressed in subsections (1)(a) and (1)(b) shall be subtracted from the annual operating budget amount as approved by the board of regents. The amount of the difference shall be financed by a state appropriation for the purpose of financing community colleges in an amount of 65%.

(2) If the state cannot fund the community colleges at 65% of the regents' recommended budget, the state shall permit the community college districts to raise the additional funds under 20-15-306.

History: En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.

20-15-304. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.

20-15-305. Adult education tax levy. A community college shall be considered a district for the purposes of adult education and under the provisions for adult education may levy a 1-mill tax for the support of its adult education program when the superintendent of public instruction approves such program.

History: En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129.

20-15-306. Additional levy proposition — submission to electors. The board of trustees of a community college district may elect to adopt a general fund budget in excess of the budget funded by the legislature. When the board of trustees proposes such a budget, it shall submit an additional levy proposition to the electors of the district. The additional levy proposition shall be submitted to the electorate in accordance with general school election laws.

History: En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.

20-15-307. Tax levy. On the second Monday of August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-303(1)(b) plus any approved additional levy. When a community college district has territory in more than one county, the board of county commissioners of each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.

20-15-308. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.

Part 4

Relationship to Other Laws

20-15-401. Purpose. It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

History: En. Sec. 1, Ch. 392, L. 1979.

Compiler's Comments

Codification instructions. Sec. 33, Ch. 392, L. 1979, provided: "The code commissioner shall codify sections 1 through 14 in chapter 15 of Title 20."

20-15-402. Precedence of community college chapter. Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

History: En. Sec. 2, Ch. 392, L. 1979.

20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-24-502, 15-24-505, 15-30-221, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-115, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 40-8-124, 40-8-125, 40-8-128, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

History: En. Sec. 12, Ch. 392, L. 1979.

20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

(3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-712, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207 through 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;

(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of 20-9-501 through 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206.

History: **En. Sec. 13, Ch. 392, L. 1979.**

CHAPTERS 16 THROUGH 19

RESERVED

CHAPTER 20

SCHOOL ELECTIONS

Part 1 — General Provisions

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20-20-411. Conduct of election.
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20-20-415. Trustees to canvass votes.
20-20-416. Certificate of election.
Sections 20-20-417 through 20-20-420 reserved.
20-20-421. Voting machines and electronic voting systems.

Part 1

General Provisions

20-20-101. Definition. As used in this title, unless the context clearly indicates otherwise, "school election" means any election conducted by a district or community college district for the purpose of electing trustees, for authorizing taxation, for authorizing the issuance of bonds by an elementary district or a high school district, or for accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.

History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-20-103. Election by ballot. All school elections shall be by ballot.

History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

20-20-104. Forms. The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.

History: **En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.**

20-20-105. Regular school election day and special school elections. The first Tuesday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: **En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404.**

20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 8 a.m.

(2) If the school election is held on the same day as a general, primary, or special election for another political subdivision, the polls shall be opened and closed at the times required for that election.

(3) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately.

History: **En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979.**

20-20-107. Election expenses. All expenses necessarily incurred in the matter of holding school elections shall be paid out of the school funds of the district, except when such expenses are by law to be shared by a community college district for which the district is conducting an election. The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage per hour of service in connection with such election.

History: **En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420.**

Part 2

Calling of and Preparation for School Elections

20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and shall conduct it in accordance with the procedures required by law, when:

(a) an election must be held on the regular school election day;

(b) in their discretion, the trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing such an order;

(d) the board of public education orders an election in accordance with the law authorizing such an order;

(e) the county commissioners order an election in accordance with the law authorizing such an order;

(f) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order (in which case the community college district shall bear its share of the cost of such election); or

(g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election shall be transmitted to the county election administrator no later than 35 days before the election in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-20-202. Time limitation for conduct of election. Whenever the trustees of any district receive an order to call an election, they shall conduct such election any time within 60 days after the date of the order unless the law or order otherwise regulates the day or timing of such election.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(2), establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before noon;

(b) establish the polling places for such election, using the established polling places for general elections within the district wherever possible;

(c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979.

20-20-204. Election notice. (1) When the trustees of any district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by posting notices in three public places in the district, provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward or precinct. Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a newspaper or by a radio or television broadcast, the trustees may cause such notification to be made.

(2) The notice of a school election, unless otherwise required by law, shall specify:

(a) the date and polling places of the election;

(b) the hours the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

History: **En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979.**

Part 3

Qualification and Registration of Electors

20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district.

History: **En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-20-302. Special qualifications for voting on bond issue. From and after March 7, 1923, only such registered electors of the school district whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of the school district required by law to be submitted to a vote of the electors thereof; provided, however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another school district.

History: **En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).**

20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-2-404 and 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge shall be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

History: **En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412.**

20-20-304 through 20-20-310 reserved.

20-20-311. Closure of registration. Registration for school elections shall close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413.

20-20-312. Listing of registered electors. After closing registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979.

20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

Part 4

Election Procedure

20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Names of candidates on school election ballots need not be rotated.

(3) The trustees are authorized to and shall administer oaths to election judges.

(4) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

20-20-402. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: **En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.**

20-20-403 through 20-20-410 reserved.

20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast his vote.

History: **En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979.**

20-20-412. Repealed. Sec. 407, Ch. 571, L. 1979.

20-20-413. Repealed. Sec. 407, Ch. 571, L. 1979.

20-20-414. Repealed. Sec. 407, Ch. 571, L. 1979.

20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

History: **En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.**

20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, the certificate shall be issued to the elected trustee and the county superintendent designating the term of the trustee position to which he has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate shall be issued to the official or public body which ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results shall be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: **En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979.**

20-20-417 through 20-20-420 reserved.

20-20-421. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district, such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of chapters 17 or 18 of Title 13. In construing the provisions of those chapters, the "county governing body" and the "election administrator" shall, for the purposes of this section, be considered to refer to trustees, and "county" shall be considered to refer to district.

History: **En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979.**

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RESERVED

CHAPTER 25

UNIVERSITY SYSTEM

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Part 1

University System — General

20-25-101. Antidiscrimination. The Montana university system shall instruct men and women on equal terms.

History: **En. 75-8401 by Sec. 1, Ch. 2, L. 1971; R.C.M. 1947, 75-8401.**

20-25-102. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation may use the name "the Montana university system" or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding $500 or less than $100.

History: **En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977; R.C.M. 1947, 75-8404.**

20-25-103. Authority to accept gifts. On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

History: **En. 75-8429 by Sec. 29, Ch. 2, L. 1971; R.C.M. 1947, 75-8429.**

20-25-104. Supplementary conservation education in university system. (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.

(2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

History: **En. 75-8803 by Sec. 59, Ch. 2, L. 1971; R.C.M. 1947, 75-8803.**

20-25-105. Endowed professorships. (1) A person contributing $15,000 or more may endow a professorship in the system or in a department of the system.

(2) The name and object of the professorships shall be designated by the regents.

History: En. 75-8804 by Sec. 60, Ch. 2, L. 1971; R.C.M. 1947, 75-8804.

20-25-106. Oath required. (1) Every professor, instructor, or teacher employed by any unit of the university system shall subscribe to the following oath or affirmation before some officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America, The Constitution of the State of Montana, and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America."

(2) This oath shall be executed in duplicate before entering upon duty. One copy shall be filed with the president of the employing unit and one copy retained by the subscriber.

(3) The above requirements shall not apply to exchange professors or temporary employees.

History: En. 75-8805 by Sec. 61, Ch. 2, L. 1971; R.C.M. 1947, 75-8805.

20-25-107. Regulation of award of degrees — penalty. (1) No person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

(2) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.

(3) Violation of this section is a misdemeanor.

History: En. 75-8502 by Sec. 31, Ch. 2, L. 1971; R.C.M. 1947, 75-8502.

20-25-108. Research programs — powers of units. (1) The units of the system are authorized, singly or in cooperation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit. A unit or organization may:

(a) contract with private organizations, companies, firms, or individuals relative to research programs;

(b) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;

(c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(d) make agreements or cooperative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(e) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;

(f) accumulate, invest, and expend the funds and proceeds from research programs;

(g) acquire real and personal property reasonably required for research programs;

(h) not divert funds, proceeds, or real and personal property from the research programs; and

(i) not charge or obligate the state of Montana or the general funds or a unit or agency.

(3) The legislature declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.

History: En. 75-8801 by Sec. 57, Ch. 2, L. 1971; amd. Sec. 10, Ch. 343, L. 1977; R.C.M. 1947, 75-8801.

Part 2

University Units

20-25-201. Units constituting university system. The Montana university system is composed of the following units, each designated by its legal name:

(1) University of Montana, located at Missoula;
(2) Montana state university, located at Bozeman;
(3) Montana college of mineral science and technology, located at Butte;
(4) Western Montana college, located at Dillon;
(5) Eastern Montana college, located at Billings; and
(6) Northern Montana college, located at Havre.

History: En. 75-8403 by Sec. 3, Ch. 2, L. 1971; R.C.M. 1947, 75-8403.

20-25-202 through 20-25-204 reserved.

20-25-205. Purpose of university — law and forestry schools. (1) The university of Montana shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.

(2) A law school is established at the university of Montana.

(3) A forestry school is established at the university of Montana.

History: En. 75-8405 by Sec. 5, Ch. 2, L. 1971; R.C.M. 1947, 75-8405.

20-25-206. Departments and courses of the university of Montana. (1) The departments of the university are:

(a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;

(b) a department of literature, science, and the arts, offering courses which shall include:

(i) mathematics, physical and natural sciences, with their application to the industrial arts;

(ii) languages, literature, history, and philosophy; and
(iii) other courses at the regents' discretion; and
(c) professional and technical departments.

(2) When the income of the university allows and demands require, the courses may form departments with a faculty and an appropriate title.

History: En. 75-8406 by Sec. 6, Ch. 2, L. 1971; R.C.M. 1947, 75-8406.

20-25-207 through 20-25-210 reserved.

20-25-211. Montana college of mineral science and technology — purpose — fees for assays. (1) The Montana college of mineral science and technology has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology", which shall be under the direction of the regents, is established at the college.

(3) The president of Montana college of mineral science and technology may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The president shall keep an account of such fees and pay them monthly to the treasurer for deposit to the college fund.

History: En. Secs. 7, 49, Ch. 2, L. 1971; R.C.M. 1947, 75-8407, 75-8608.

20-25-212. Bureau of mines and geology — purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems the regents consider valuable to the people of Montana;

(9) communicate special information of Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the system;
(b) the state mine inspector;
(c) departments of the state;
(d) the United States geological survey; and
(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of state lands and make investments. These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served. Written reports shall be made. Travel expenses incurred by the examiner shall be paid as provided for in 2-18-501 through 2-18-503, as amended, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with, illustrations and maps and distribute them on direction of the regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977; R.C.M. 1947, 75-8408.

20-25-213. Bureau director and assistants — duties. The director and assistants of the bureau of mines and geology shall:

(1) take an oath to perform all required services;

(2) guard all confidential information accumulated in their work;

(3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services until the knowledge is published and submitted to the people of Montana; and

(4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

History: En. 75-8409 by Sec. 9, Ch. 2, L. 1971; R.C.M. 1947, 75-8409.

20-25-214 through 20-25-220 reserved.

20-25-221. Montana state university — designation and purpose. (1) The land-grant university for the state of Montana, designated as "Montana state university", is established at Bozeman under the provisions of the Morrill Act of 1862.

(2) Montana state university shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature, and arts, including military science, as well as professional programs in agriculture, engineering, and other fields as may be prescribed by the regents.

History: En. 75-8410 by Sec. 10, Ch. 2, L. 1971; R.C.M. 1947, 75-8410.

20-25-222. Agricultural experiment station — establishment and purpose. (1) There is established at the state university at Bozeman and under its direction an agricultural experiment station, by virtue of the

Hatch Act approved by congress on March 2, 1887. The provisions, donations, and benefits contained in that act and all acts supplementary thereto or amendatory thereof are accepted and adopted by the state of Montana.

(2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations, and experiments relating to agriculture, natural resources, and rural life and to diffuse information thereby acquired among the people of Montana.

(3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

History: En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.

20-25-223. Director of agricultural experiment station — duties. The director shall have the immediate direction, management, and control of the agricultural experiment station, subject to the general supervision, direction, and control of the regents and the president of the state university.

History: En. Sec. 3, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.1.

20-25-224. Agricultural research centers. (1) The following agricultural research centers are established as a part of the agricultural experiment station:

(a) the central agricultural research center, located near Moccasin;
(b) the western agricultural research center, located near Corvallis;
(c) the northern agricultural research center, located near Havre;
(d) the southern agricultural research center, located near Huntley;
(e) the northwestern agricultural research center, located near Kalispell;
(f) the eastern agricultural research center, located near Sidney.

(2) All research centers shall be under the general supervision of the director of the agricultural experiment station.

History: En. Sec. 4, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.2.

20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana trust and legacy fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of such fund.

(2) The total amount which may be used for purchase of needed lands for sites or experimental farms may not exceed 10% in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent account in the Montana trust and legacy fund.

(3) No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation, or repair of any building or buildings.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

History: En. 75-8606 by Sec. 47, Ch. 2, L. 1971; R.C.M. 1947, 75-8606.

20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits thereof in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station shall be the beneficiary of the funds in the act and shall use the funds only for the purposes therein provided.

(c) The treasurer of Montana state university may receive all moneys appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and shall receive, hold, and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of said act.

(c) He may receive and expend such money in accordance with the provisions of said act and any agreements so made.

History: (1)Ap. p. Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; Ap. p. Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; Sec. 75-8605, R.C.M. 1947; (2)En. Sec. 45, Ch. 2, L. 1971; Sec. 75-8604, R.C.M. 1947; R.C.M. 1947, 75-8603(1) thru (3), 75-8604, 75-8605(1)(b).

20-25-227. Montana wool laboratory — designation and purpose. (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 5, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.3.

20-25-228. Wool laboratory funds and fees. (1) The wool laboratory shall:

(a) cooperate fully with the United States department of agriculture for the benefit of the Montana wool industry; and

(b) keep a complete and comprehensive system of records covering its internal administration, activities, and meetings of its advisory committee and all sampling, testing, and research work.

(2) The wool laboratory may:

(a) receive any moneys which the federal government may make available for the use of the laboratory and pay all such funds to the state treasurer to be deposited in a special trust fund; and

(b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.

(3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

(4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.

(5) The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

History: En. 75-8607 by Sec. 48, Ch. 2, L. 1971; R.C.M. 1947, 75-8607.

20-25-229. Montana grain and seed laboratory. (1) There is established as a part of the agricultural experiment station the Montana grain and seed laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of grains and seeds as possible.

(3) The laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 6, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.4.

20-25-230. Acceptance of donations. The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

History: En. Sec. 7, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.5.

20-25-231. Federal grants and cooperative research studies. The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for cooperative research studies.

History: En. Sec. 8, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.6.

20-25-232. Income from sale of products — disposition. Any income received from the sale of agricultural products and services by the agricultural experiment station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 9, Ch. 29, L. 1971; Sec. 75-8411.7, R.C.M. 1947; En. 75-8603 by Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; R.C.M. 1947, 75-8411.7, 75-8603(4).

20-25-233 through 20-25-240 reserved.

20-25-241. Montana forest and conservation experiment station established. There is hereby established in the university of Montana forestry school a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the board of regents.

History: **En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974; R.C.M. 1947, 28-301.**

20-25-242. Purpose of station. (1) It is the purpose of this station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the stockman;

(e) study the findings of other agencies that the information thus obtained may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing therefrom; prepare and publish bulletins and reports, with the necessary illustrations and maps, that the information collected by the station in forestry and in conservation may be made available for use; and distribute this information or material in such other ways as the board of regents may direct;

(g) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

(h) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; investigate and make tests of forest products produced or that may be produced within the state that markets may be improved thereby;

(i) consider such other scientific and economic problems as, in the judgment of the board of regents, are of value to the people of the state;

(j) cooperate with the other departments of the university of Montana, the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations;

(k) establish such field experiment stations as in the judgment of the board of regents may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of 20-25-241 through 20-25-245.

History: En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974; R.C.M. 1947, 28-303.

20-25-243. Director of station. The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The board of regents shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary and to fix the compensation of all persons connected with said station.

History: En. Sec. 2, Ch. 141, L. 1937; R.C.M. 1947, 28-302.

20-25-244. Oath of office. The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to:

(1) perform all the services required of them under 20-25-241 through 20-25-245;

(2) guard carefully all confidential information accumulated in the progress of their work; and

(3) turn in to the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station.

History: En. Sec. 5, Ch. 141, L. 1937; R.C.M. 1947, 28-305.

20-25-245. Reports — disposition of income. (1) The board of regents may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the board of regents may direct and as the interests of the state and of science and industry may demand.

(2) Income received by the station shall be deposited in the state treasury and used for the purposes of administering 20-25-241 through 20-25-245.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963; R.C.M. 1947, 28-304.

20-25-246 through 20-25-250 reserved.

20-25-251. Purpose of eastern Montana college. Eastern Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8423 by Sec. 23, Ch. 2, L. 1971; R.C.M. 1947, 75-8423.

20-25-252. Donations to eastern Montana college. The regents may accept for and on behalf of eastern Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8425 by Sec. 25, Ch. 2, L. 1971; R.C.M. 1947, 75-8425.

20-25-253. Purpose of western Montana college. Western Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8424 by Sec. 24, Ch. 2, L. 1971; R.C.M. 1947, 75-8424.

20-25-254. Donations to western Montana college. The regents may accept for and on behalf of western Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8426 by Sec. 26, Ch. 2, L. 1971; R.C.M. 1947, 75-8426.

20-25-255. Acceptance of public lands. (1) The regents shall receive, in the names of western Montana college and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at western Montana college or at eastern Montana college, provided that any such pledge shall be subject to any prior pledge.

History: En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977; R.C.M. 1947, 75-8427.

20-25-256. Purposes of northern Montana college. Northern Montana college has for its purpose instruction and education in:

(1) the English language, history, literature, mathematics, bookkeeping, moral philosophy, and political, rural, and household economy;

(2) mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art;

(3) entomology, geology, and such other natural sciences as may be prescribed by the regents;

(4) agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;

(5) irrigation and use of water for agricultural purposes; and

(6) all that relates to an efficient, modern manual training school.

History: En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971; R.C.M. 1947, 75-8428.

Part 3

Administration of University System

20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:

(1) have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of such institutions;

(5) adopt and use an official seal in the authentication of its acts;

(6) keep a record of its proceedings;

(7) report as provided in 2-7-102;

(8) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(9) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(10) have general control of all receipts and disbursements of the system;

(11) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(12) appoint an executive secretary of the system, who shall not be a unit president, fix his term of office and salary, and generally prescribe his duties. The executive secretary is not a member of the board, but he shall serve as the secretary for the regents.

(13) appoint every 2 years a budget committee composed of four members selected from the appointive members of the regents which shall review the budget requests presented by the units of the system and transmit such requests and its recommendations to the regents;

(14) confer upon the executive board of each of the units of the system such authority as may be deemed expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(15) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(16) prevent unnecessary duplication of courses at the units of the system;

(17) investigate the needs of the units by each member of the regents visiting each unit at least once each year;

(18) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees and fix their compensation. The regents shall prepare a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.

(19) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(20) adopt a seal bearing on its face the words "Montana university system", which shall remain in the custody of the executive secretary and which

shall be affixed to all diplomas and all other papers, instruments, or documents which may require it.

History: En. 75-8501 by Sec. 30, Ch. 2, L. 1971; R.C.M. 1947, 75-8501.

20-25-302. Revenue-producing facilities — powers of regents. The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons, which charges, admissions, and fees shall not be deemed to be tuition within the meaning of 20-25-421 and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students or upon all of a specified class of students in attendance at any unit of the Montana university system shall not be increased without authorization by law unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged or to maintain reserves securing the payment of such obligations in accordance with the indentures, resolutions, contracts, or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than $50 per student per academic year, such fees may be increased or additional student building fees may be established to an aggregate amount not exceeding $50 per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana at Missoula to an aggregate amount not to exceed $90 per student per academic year. This limitation shall not affect admission or use charges which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made to nonresident students as defined in 20-25-421.

(3) hold the net income derived from the operation of such facilities and the charges, admissions, and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of such facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for such uses, at such times, for such periods, and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for such facilities.

History: **En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503.**

20-25-303. Local executive boards — terms and compensation. (1) There is a local executive board for each unit of the system.

(2) (a) Each local executive board shall consist of three members appointed by the governor with the advice and consent of the regents.

(b) The president of each unit shall not be a member of the local executive board.

(c) Two of the members must reside in the county where the unit is located.

(d) The members shall hold office for 3 years beginning the third Monday in April of the year appointed. The term of office of one member shall expire each year.

(e) The members may be removed by the governor or the regents.

(f) The members shall qualify by filing their oath of office with the regents.

(3) All vacancies shall be filled by appointment by the governor and referred to the regents at their first meeting thereafter for confirmation.

(4) Each local executive board shall elect a chairman and appoint a secretary.

(5) The compensation for the members shall be fixed by the regents. It shall not exceed $5 for each day spent in discharging their duties or $125 in any one year for each member. The members shall be reimbursed from the amount appropriated by the legislature for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties.

History: **En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510.**

20-25-304. Powers of local executive boards. Each local executive board shall:

(1) meet at least once in each quarter and more often if required;

(2) have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents.

History: En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 1947, 75-8511.

20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system shall:

(1) have the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) be the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) have the duties of one of the professorships as long as the interests of the unit require it;

(4) perform the duties of corresponding secretary for the unit;

(5) make an annual report to the regents containing such information as they may request; and

(6) furnish any special report on request of the regents or the legislature.

History: En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512.

20-25-306 through 20-25-310 reserved.

20-25-311. Motor vehicle regulation — parking and operation. The regents of the Montana university system are authorized to make rules at each unit of the university system concerning the parking and operation of motor vehicles upon the grounds, streets, drives, and alleys of each unit.

History: En. Sec. 1, Ch. 398, L. 1971; R.C.M. 1947, 75-8503.2.

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees not to exceed $10 per quarter for parking on campus;

(b) assess fines in accordance with a published schedule for violations of motor vehicle or parking regulations of each unit in an amount not to exceed $10 per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the concurrence of the state auditor under the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control.

History: En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974; R.C.M. 1947, 75-8503.3; amd. Sec. 1, Ch. 150, L. 1979.

20-25-313 through 20-25-320 reserved.

20-25-321. Security department members — appointment — powers. (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system, as such security departments are constituted on July 1, 1971, or may thereafter be constituted. Persons employed and compensated as members of the security departments when so appointed are peace officers; however, such peace officers shall not exercise their authority except:

(a) upon the campuses of the Montana university system and, for campus-related activities, an area within 1 mile of the exterior boundaries of each thereof; and

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system.

(2) Such officers shall have no power to serve and execute civil processes.

History: En. Sec. 1, Ch. 405, L. 1971; R.C.M. 1947, 75-8513.

20-25-322. Traffic citations — agreements with city or county. The president of each unit may in his discretion enter into an agreement with the city or county in which his unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws which occur within the boundaries of the campus or on streets or alleys contiguous thereto. All such citations shall be considered within the jurisdiction of the appropriate local authority and shall be handled in the same manner as citations issued by peace officers of such local authority.

History: En. Sec. 2, Ch. 405, L. 1971; R.C.M. 1947, 75-8514.

20-25-323. Control and direction of security department. The president of each unit shall have general control and direction of the security department of his unit.

History: En. Sec. 3, Ch. 405, L. 1971; R.C.M. 1947, 75-8515.

20-25-324. Firearms. Security guards shall be authorized to carry firearms between sunset and sunrise and at any time when acting as guards for transportation of money or other valuables.

History: En. Sec. 4, Ch. 405, L. 1971; R.C.M. 1947, 75-8516.

Part 4

Miscellaneous Finance

20-25-401. Student building fees at Montana state university. The board of regents of the Montana university system is authorized to establish and collect student building fees for all students or for all of any specified class of students in attendance at Montana state university, Bozeman, Montana, in the amount of $9.25 per student for each quarter of the academic year and for each summer session and to pledge the receipts of such fees for the payment of the cost of acquisition, construction, and equipment of physical education, athletic, and recreation facilities at the university or of the principal and interest on revenue bonds to be issued to finance such facilities, in accordance with the provisions of parts 3 and 4 of this chapter. Of the fee so authorized, $3 is included in the student building fees established and in effect at the university on January 1, 1965, and the remainder is authorized as an increase in such fees pursuant to 20-25-302.

History: **En. Sec. 1, Ch. 223, L. 1971; R.C.M. 1947, 75-8503.1.**

20-25-402. Borrowing by regents. In carrying out the above powers, the regents may:

(1) borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for 1 year thereafter and the creation of a reserve for the payment of bond principal and interest;

(2) make purchases on a time or installment basis;

(3) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds or bonds registered as to ownership of principal only;

(4) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(5) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;

(6) secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana or by a resolution establishing covenants of the regents with the holders of such bonds relating to:

(a) the construction, operation, use, and insurance of the facilities;

(b) the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;

(c) the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and

(d) such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(7) issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents before or after January 29, 1971, subject to the following provisions:

(a) refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) in any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than $1 million and shall be invested in the amount and in securities maturing on the dates and bearing interest at the rates which will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) revenues or other funds on hand, in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (7)(c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) sell bonds and sell or exchange refunding bonds issued hereunder in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977; R.C.M. 1947, 75-8504.

20-25-403. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. 75-8505 by Sec. 34, Ch. 2, L. 1971; R.C.M. 1947, 75-8505.

20-25-404. Revenue-producing facilities considered as one. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one, but income received at one unit shall not be used to discharge obligations created for facilities at another unit.

History: En. 75-8506 by Sec. 35, Ch. 2, L. 1971; R.C.M. 1947, 75-8506.

20-25-405. Restriction on use of state funds. No state funds except those specified in 20-25-402 shall be obligated or used for the purposes of parts 3 and 4 of this chapter unless specifically directed by the legislature.

History: En. 75-8507 by Sec. 36, Ch. 2, L. 1971; R.C.M. 1947, 75-8507.

20-25-406. Previous contracts unimpaired. This chapter shall not impair any contract, indenture, or agreement executed under previous laws.

History: En. 75-8508 by Sec. 37, Ch. 2, L. 1971; R.C.M. 1947, 75-8508.

20-25-407. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) any contract or undertaking or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to January 18, 1971; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to January 18, 1971.

History: **En. 75-8509 by Sec. 38, Ch. 2, L. 1971; R.C.M. 1947, 75-8509.**

20-25-408 through 20-25-420 reserved.

20-25-421. Charges for tuition — waiver of nonresident fees. The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive, at their discretion, nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age.

History: **En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974; R.C.M. 1947, 75-8601.**

20-25-422. Support of university of Montana. (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law thereto;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all such funds shall be placed at the disposal of the regents by transfer to its treasurer and shall be kept separate and distinct from all other funds. The income shall be used solely for the support of the colleges and departments of the university or those connected therewith.

(3) All means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: **En. 75-8602 by Sec. 43, Ch. 2, L. 1971; R.C.M. 1947, 75-8602.**

20-25-423. State tax levy — support of public education institutions. The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1979. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

History: **En. Sec. 1, Ref. 75, app. Nov. 7, 1978.**

Compiler's Comments

Effective date. This section, proposed by Referendum 75 (Ch. 463, L. 1977) and approved at the general election held Nov. 7, 1978, was effective July 1, 1979.

20-25-424. Receipt of funds. (1) The treasurer of Montana state university may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before September 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; R.C.M. 1947, 75-8605(1)(a), (2).

20-25-425. Control of expenditures. Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977; R.C.M. 1947, 75-8609.

20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises shall be made to each unit in its legal name. If made to any officer or board of the unit, they shall be immediately transferred to the unit.

History: En. 75-8610 by Sec. 51, Ch. 2, L. 1971; R.C.M. 1947, 75-8610.

20-25-427 through 20-25-430 reserved.

20-25-431. Construction project at Montana state university and eastern Montana college. (1) Under the provisions of 20-25-302(1) and 18-2-102, the legislature authorizes and consents to a capital construction program at Montana state university, Bozeman, Montana, and eastern Montana college at Billings, Montana, consisting of the acquisition, construction, and equipping of improvements to:

(a) the student union building at Montana state university;

(b) the physical education, athletic, and recreational facilities at Montana state university; and

(c) the physical education, athletic, and recreational facilities at eastern Montana college.

(2) The legislature further consents to the financing of these projects by the board of regents of higher education from gifts, grants, fees and earnings and from the issuance of bonds by the board of regents in accordance with 20-25-402, 20-25-432, and 20-25-433.

History: En. Sec. 1, Ch. 672, L. 1979.

Compiler's Comments

Severability. Sec. 5, Ch. 672, L. 1979, was a severability clause.

20-25-432. Bonds for construction project — limits. Upon request of the board of regents, the board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 17, chapter 5, part 4:

(1) in a principal amount not to exceed $4,000,000 for the purpose of financing the costs of the student union building at Montana state university; and

(2) in a principal amount not to exceed $2,500,000 for the purpose of financing the costs of the physical education, athletic, and recreational facilities at Montana state university; and

(3) in a principal amount not to exceed $1,500,000 for the purpose of financing the cost of the physical education, athletic, and recreational facilities at eastern Montana college. In addition to the bonding authorization, $800,000 of federal or private funds is authorized.

History: **En. Sec. 2, Ch. 672, L. 1979.**

20-25-433. Sale and issuance of bonds — requirements. The sale and issuance of bonds pursuant to 20-25-432 shall be subject to an undertaking by the board of regents to pay the state treasurer for deposit in the sinking fund account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on the bonds. The undertaking by the board of regents may be in the form of a revenue bond or bonds issued by the board of regents to the board of examiners or it may be in the form of an agreement between the board of regents and board of examiners. The payments under any such bonds or agreement shall be from such revenues, fees, and income as are lawfully available to the board of regents to pay the costs of facilities to be financed by the long-range building program bonds hereby authorized or to pay debt service on obligations of the board of regents incurred with respect to such facilities and costs. All agreements or bond arrangements entered into between the board of regents and the department of administration will specifically require the board to maintain debt service payments and the reserve requirement to the long-range building sinking fund. If enrollment reductions should endanger these payments, the regents shall insure continued payments through budget adjustments which include fee increases. With the approval of the board of examiners, any undertaking and the payments thereunder may be subordinated to other obligations of the board of regents upon such terms as the board of examiners considers appropriate. The undertaking of the board of regents shall be solely for the benefit of and enforceable by the state and may not be enforceable by the holders of the long-range building program bonds. The bonds may be issued in one or more series.

History: **En. Sec. 3, Ch. 672, L. 1979.**

20-25-434. Deposit and expenditure of bond proceeds. The proceeds of the bonds authorized by 20-25-431 and 20-25-432 shall be deposited in the clearance fund account created by 17-5-401(2). No construction or related bids shall be let until the bond proceeds are deposited in the clearance fund. The amount of such proceeds is appropriated from the clearance fund account to the board of regents for the purpose for which the bonds are authorized.

History: **En. Sec. 4, Ch. 672, L. 1979.**

Part 5

University Students — Qualifications and Rights

20-25-501. Definitions. (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Emancipated minor" means a person under the age of 18 years who supports himself from his own earnings or is married. A person who received more than 25% of the cost of supporting himself from any person other than an agency of the government shall not be considered an emancipated minor.

(c) "Minor" means a male or female person who has not obtained the age of 18 years.

(d) "Qualified person" means a person legally qualified to determine his own domicile.

(e) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least 1 full year of the 2 years immediately preceding his graduation from high school. Such classification shall continue for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, his spouse, or his dependent children.

(2) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973; R.C.M. 1947, 75-8702; amd. Sec. 1, Ch. 435, L. 1979.

20-25-502. Qualification of students. The university system is open to all people, subject to such uniform regulations as the regents deem proper.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child, or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as he continues his Montana domicile. In the administration of this subsection, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977; R.C.M. 1947, 75-8703; amd. Sec. 2, Ch. 435, L. 1979.

20-25-504. Evidence as to domiciliary intent — changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence shall be filed with the registering authority of the unit. Changes in classification shall be in writing signed by the registering authority and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependent's classification

for tuition and fee purposes unless he completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal.

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975; R.C.M. 1947, 75-8704.

20-25-505. Indians — nonpayment of fees. (1) Persons of one-fourth Indian blood or more who are bona fide residents of the state of Montana for at least 1 year prior to enrollment in the Montana university system, have completed a 4-year course in an accredited high school or federal Indian school, and show financial need and evidence of studious and industrious habits may enroll in the university system without the payment of fees.

(2) Each unit shall make rules governing the selection of these students.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971; amd. Sec. 35, Ch. 266, L. 1977; R.C.M. 1947, 75-8705.

20-25-506. Military instruction. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

20-25-507 through 20-25-510 reserved.

20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety, and privacy of a person's residence and the privacy of his records. Intrusions by police and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973; R.C.M. 1947, 75-8706.

20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973; R.C.M. 1947, 75-8707.

20-25-513. Written notice required for entry to student's room — emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student a notice in writing. An emergency such as a fire or a call for help or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency, evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973; R.C.M. 1947, 75-8708.

20-25-514. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state, and nation.

History: En. Sec. 4, Ch. 357, L. 1973; R.C.M. 1947, 75-8709.

20-25-515. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973; R.C.M. 1947, 75-8710.

20-25-516. Academic records to be kept separate — student's right to examine records. (1) Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature.

(2) A student shall have the right to examine all written summaries, descriptions, statements, or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973; R.C.M. 1947, 75-8711.

Part 6

Health Education — Drug and Alcohol Instruction

20-25-601. Purpose of part — legislative intent. It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

20-25-602. Teacher instruction — colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university after December 31, 1972, must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded his degree.

History: En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903.

20-25-604. Department in advisory capacity. The department of health and environmental sciences shall act in an advisory capacity in establishing all courses required under this part, and said courses shall be established only after consultation with and advice by the department.

History: En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905.

Part 7

Work-Study Program

20-25-701. Definitions and purpose. (1) As used in this part, unless the context otherwise requires, the following definitions apply:

(a) "Institution" means any public institution of postsecondary education governed, supervised, or coordinated by the board of regents of higher education.

(b) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution or who is presently enrolled as a full-time student in good standing, as determined by the institution.

(2) It is the purpose of this part to help ensure that no resident of Montana be denied attendance at institutions governed, supervised, or coordinated by the board of regents of higher education because of financial barriers and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units and certain public interest organizations.

History: En. 75-9101, 75-9102 by Secs. 1, 2, Ch. 307, L. 1974; R.C.M. 1947, 75-9101, 75-9102.

20-25-702. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this part.

History: En. 75-9103 by Sec. 3, Ch. 307, L. 1974; R.C.M. 1947, 75-9103.

20-25-703. Limitation on use of funds. No less than 70% of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307, L. 1974; R.C.M. 1947, 75-9104.

20-25-704. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307, L. 1974; R.C.M. 1947, 75-9105.

20-25-705. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: En. 75-9106 by Sec. 6, Ch. 307, L. 1974; R.C.M. 1947, 75-9106.

20-25-706. Eligibility. Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program, which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or faction in an election for public or party office;

(3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: En. 75-9107 by Sec. 7, Ch. 307, L. 1974; R.C.M. 1947, 75-9107; amd. Sec. 13, Ch. 384, L. 1979.

20-25-707. Antidiscrimination. No employer is eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental handicap, ancestry, or national origin.

History: En. 75-9108 by Sec. 8, Ch. 307, L. 1974; amd. Sec. 36, Ch. 266, L. 1977; R.C.M. 1947, 75-9108.

20-25-708. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program, subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: **En. 75-9109 by Sec. 9, Ch. 307, L. 1974; R.C.M. 1947, 75-9109.**

20-25-709. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than 30% of the student's hourly wage.

History: **En. 75-9110 by Sec. 10, Ch. 307, L. 1974; R.C.M. 1947, 75-9110.**

Part 8

Western Regional Higher Education Compact

20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of Montana hereby approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a chairman and a vice-chairman and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any

time but in any event must meet at least once a year. The chairman may cal such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additiona meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions determine the cost of providing the facilities for graduate and professiona education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in ful its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annua audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractua agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting

such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1, Ch. 216, L. 1951; R.C.M. 1947, 75-4901.

20-25-802. Effective date — notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification, and adoption of said compact by the 32nd legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact, and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951; R.C.M. 1947, 75-4902.

20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students. The western interstate commission for higher education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis, the payment of partial or full tuition and other charges, and the furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

History: En. Sec. 1, Ch. 128, L. 1971; R.C.M. 1947, 75-4903.

20-25-804. Form and contents of agreements. The authority conferred by 20-25-803 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

History: En. Sec. 2, Ch. 128, L. 1971; R.C.M. 1947, 75-4904.

20-25-805. State obligations or rights under compact not altered. Nothing contained in this chapter shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

History: En. Sec. 3, Ch. 128, L. 1971; R.C.M. 1947, 75-4905.

20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;

(b) one member who is engaged in a professional occupation; and

(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of his appointment, even though his legislative term may have ended.

History: En. Sec. 1, Ch. 130, L. 1979.

CHAPTER 26

STUDENT FINANCIAL ASSISTANCE

Part 1 — General Provisions

Section

20-26-101. Short title.
20-26-102. Purpose.
20-26-103. Definitions.
20-26-104. Resident student financial assistance program created.

Part 2 — Administration of Program

20-26-201. Duties of commissioner of higher education relative to program.
20-26-202. Administrative costs.
20-26-203. Deposit of moneys.

Parts 3 through 10 reserved

Part 11 — Guaranteed Student Loan Program

20-26-1101. Definitions.
20-26-1102. Authorization to establish guaranteed student loan program.
20-26-1103. Duties of the board.
20-26-1104. Student loan advisory council — duties.
20-26-1105. Guaranteed student loan account.
20-26-1106. No state obligation.
20-26-1107. Dissolution — disposition of money.

Part 1

General Provisions

20-26-101. Short title. Parts 1 and 2 may be cited as "The Montana Resident Student Financial Assistance Program".

History: En. 75-9401 by Sec. 1, Ch. 515, L. 1977; R.C.M. 1947, 75-9401.

20-26-102. Purpose. The purpose of parts 1 and 2 is to establish a program to provide financial assistance to resident Montana postsecondary students.

History: En. 75-9402 by Sec. 2, Ch. 515, L. 1977; R.C.M. 1947, 75-9402.

20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

(2) "Postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under chapter 30 of this title.

(3) "Program advisory council" means the resident student financial assistance program advisory council created by 2-15-1517.

History: (1), (2)En. 75-9403 by Sec. 3, Ch. 515, L. 1977; Sec. 75-9403, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9403.

20-26-104. Resident student financial assistance program created. There is a resident student financial assistance program administered by the commissioner of higher education in consultation with the program advisory council.

History: En. 75-9404 by Sec. 4, Ch. 515, L. 1977; R.C.M. 1947, 75-9404.

Part 2

Administration of Program

20-26-201. Duties of commissioner of higher education relative to program. In consultation with the program advisory council, the commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private moneys.

History: En. 75-9406 by Sec. 6, Ch. 515, L. 1977; R.C.M. 1947, 75-9406.

20-26-202. Administrative costs. Administration costs not provided by the federal grant that are attributable to parts 1 and 2 shall be negotiated and charged to the individual participants.

History: En. 75-9408 by Sec. 8, Ch. 515, L. 1977; R.C.M. 1947, 75-9408.

20-26-203. Deposit of moneys. Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of parts 1 and 2, shall be deposited in the state treasury.

History: En. 75-9407 by Sec. 7, Ch. 515, L. 1977; R.C.M. 1947, 75-9407.

Parts 3 through 10 reserved

Part 11

Guaranteed Student Loan Program

20-26-1101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of regents of higher education.

(2) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

(3) "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(4) "Guaranteed student loan program" means the program established by the board pursuant to this part.

(5) "Nonprofit corporation" means the private nonprofit corporation designated by the board to administer student loans.

History: **En. Sec. 3, Ch. 691, L. 1979.**

Compiler's Comments

Effective date. Sec. 10, Ch. 691, L. 1979, provided: "This act is effective on passage and approval." Approved May 9, 1979.

20-26-1102. Authorization to establish guaranteed student loan program. (1) The board may establish and contract for the operation of a guaranteed student loan program for the purpose of making available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of the guaranteed student loan program.

History: **En. Sec. 4, Ch. 691, L. 1979.**

20-26-1103. Duties of the board. In discharging its duties in relation to the guaranteed student loan program, the board shall:

(1) act as guarantor on loans of money, upon such terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions, insurance companies, or other lenders as eligible lenders upon their meeting the standards established by the board for making guaranteed student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States commissioner of education, for the administration of the guaranteed student loan program;

(5) contract with a nonprofit corporation for the operation of the guaranteed student loan program to provide loan approval processing, essential and special loan servicing, preclaims assistance, claim processing and collections, and other services that would promote lender participation and loan availability to students;

(6) perform any other duties necessary for the administration of the guaranteed student loan program.

History: **En. Sec. 5, Ch. 691, L. 1979.**

20-26-1104. Student loan advisory council — duties. The council shall:

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of this part;

(2) make recommendations to the board concerning the designation of a nonprofit corporation;

(3) monitor the nonprofit corporation to assure that both the students and lenders are adequately served; and

(4) advise on the adequacy and proper execution of any contracts entered into between the board and the nonprofit corporation.

History: En. Sec. 6, Ch. 691, L. 1979.

20-26-1105. Guaranteed student loan account. (1) There is a guaranteed student loan revolving account within the university student loan fund provided for in 17-2-102(11).

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year.

History: En. Sec. 7, Ch. 691, L. 1979.

20-26-1106. No state obligation. The legislature is not obligated to appropriate any money to pay for guaranteed student loan defaults. For the purpose of the guaranteed student loan program, neither the board nor the nonprofit corporation may obligate the credit of the state.

History: En. Sec. 8, Ch. 691, L. 1979.

20-26-1107. Dissolution — disposition of money. (1) The guaranteed student loan program may not be dissolved until all contractual obligations have been satisfied and all loans guaranteed have been paid by the borrower or, if in default, by the board.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the guaranteed student loan program not refundable to the federal government as provided by law vest in the state and shall be credited to the general fund.

History: En. Sec. 9, Ch. 691, L. 1979.

CHAPTERS 27 THROUGH 29

RESERVED

CHAPTER 30

PROPRIETARY POSTSECONDARY EDUCATIONAL INSTITUTIONS

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20-30-101. Legislative purpose and definitions.
20-30-102. Exemptions.
20-30-103. Administration.
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20-30-201. Powers and duties of department.
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20-30-401. Civil relief.
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20-30-403. Violations — criminal — penalty.
20-30-404. Jurisdiction of courts — service of process.
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Part 1

General Provisions

20-30-101. Legislative purpose and definitions. (1) It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that proprietary institutions offering postsecondary educational, vocational, and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair, and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable proprietary postsecondary institutions which are in the great majority. Thus it is the purpose of this chapter to provide for the protection, education, and welfare of the citizens of this state.

(2) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Advisory council" or "council" means the advisory council created by 2-15-1804.

(b) "Agent" means any person owning any interest in, employed by, or representing a postsecondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such postsecondary institution or who offers to award educational credentials on behalf of such institution for remuneration or who holds himself out to the residents of this state as representing a postsecondary institution for any such purpose.

(c) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

(d) "Department" means the department of business regulation.

(e) "Education or educational services" means a class, course, or program of training, instruction, or study.

(f) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education through a postsecondary educational institution.

(g) "Grant" means sell, award, confer, bestow, or give.

(h) "Institution" means an academic, vocational, technical, home study, business, professional, or other school, college, or university or any person, association, or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state, another state, or the government of the United States at the public expense.

(i) "License" means written approval issued by the department to operate or to contract to operate a postsecondary institution in this state.

(j) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit, or encourage any person, directly or indirectly, in any form, to perform the act described.

(k) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association, or corporation to establish and maintain such facility.

(l) "Permit" means written approval issued by the department to any person to act as an agent for a postsecondary educational institution.

(m) "Postsecondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance, for the attainment of academic, professional, or vocational objectives.

History: En. Secs. 1, 2, Ch. 296, L. 1974; Secs. 75-9201, 75-9202, R.C.M. 1947; (2)(a)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9201, 75-9202.

20-30-102. Exemptions. The following are exempt from the provisions of this chapter:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without the payment of fees, unless such education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Title 37, chapter 31.

History: En. 75-9203 by Sec. 3, Ch. 296, L. 1974; amd. Sec. 1, Ch. 211, L. 1975; R.C.M. 1947, 75-9203; amd. Sec. 1, Ch. 469, L. 1979.

20-30-103. Administration. The department shall administer this chapter. To effect the purposes of this chapter, the department may request from any agency of the state and every agency shall provide such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

History: En. 75-9204 by Sec. 4, Ch. 296, L. 1974; R.C.M. 1947, 75-9204.

20-30-104. Advisory council — duties — organization — compensation. (1) The advisory council shall advise the department of policies, rules, and procedures necessary for carrying out the provisions of this chapter.

(2) The council's organization, meetings, quorum, and compensation are as provided in 2-15-122.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(2), (3).

20-30-105. Preservation of records. (1) In the event any postsecondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study and, as a separate document, the academic record of each former student.

(2) In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion and without order of

court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

History: **En. 75-9218 by Sec. 18, Ch. 296, L. 1974; R.C.M. 1947, 75-9218.**

Part 2

Administration by Department of Business Regulation

20-30-201. Powers and duties of department. To administer this chapter, the department shall have the following powers and duties:

(1) to establish minimum criteria, in consultation with the commissioner of higher education, conforming to the minimum standards in 20-30-202, which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rulemaking procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits, and of accrediting agencies recognized under 20-30-102(1), provided that an institution and its agent exempt from this chapter may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this chapter, provided that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license or for a permit or with respect to the enforcement of any provision of this chapter or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time, not less than 10 years, copies of academic records pursuant to 20-30-105;

(6) to establish, with the advice of the advisory council, rules and procedures necessary for the implementation of this chapter which shall have the force of law, provided the requirements of the Montana Administrative Procedure Act for rulemaking procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this chapter; to subpoena any persons or documents pertaining to such investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

History: **En. 75-9206 by Sec. 6, Ch. 296, L. 1974; R.C.M. 1947, 75-9206.**

20-30-202. Minimum standards. (1) In establishing the criteria required by 20-30-201, the department shall observe and shall require compliance with the following minimum standards:

(a) A postsecondary educational institution must be maintained and operated or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials, and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department, and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) An applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a postsecondary educational institution which meets the minimum standards established in this section and the criteria established under 20-30-201.

(c) No postsecondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this chapter located within this state which used either term on January 1, 1974, may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States office of education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under 20-30-201, provided the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

History: En. 75-9207 by Sec. 7, Ch. 296, L. 1974; R.C.M. 1947, 75-9207.

20-30-203. Acts prohibited without permit or license. No person, group, association, or corporation, alone or in concert with others, shall:

(1) operate in this state a postsecondary educational institution unless the institution is exempt from the provisions of this chapter or is licensed by the department;

(2) offer instruction in, enrollment in, or grant of educational credentials as or through an agent by a postsecondary educational institution not exempted from this chapter, whether within or without the state, unless the agent possesses a currently valid permit as required by this chapter;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this chapter;

(4) offer education or educational services or educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose or offer to grant, grant, or contract with any person for that purpose in this state unless the person, group, association, or corporation complies with the minimum standards in 20-30-202, the criteria established by the department, and the rules adopted by the department;

(5) act as an agent for a postsecondary educational institution unless currently possessing a valid permit from the department.

History: En. 75-9208 by Sec. 8, Ch. 296, L. 1974; R.C.M. 1947, 75-9208.

Part 3

Licenses and Permits

20-30-301. License to operate institution. (1) Each postsecondary educational institution not exempted from this chapter intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this chapter.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate, and evidence of a surety bond as

required by this chapter, the department shall either issue or not issue a license to operate a postsecondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) date of issuance, effective date, and date of expiration;

(b) the name and address of the institution licensed;

(c) the authority for and conditions of approval; and

(d) any terms or conditions required by the department.

(4) No license shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9209 by Sec. 9, Ch. 296, L. 1974; R.C.M. 1947, 75-9209.

20-30-302. Permit to act as agent. (1) Each person intending to act in this state as an agent for a postsecondary institution not exempt from the provisions of this chapter shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this chapter and the sworn affidavits of three residents of this state as to the good character and reputation of the applicant and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate, and evidence of a surety bond required by this chapter, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) the date of issuance, effective date, and date of expiration;

(b) the name and address of the agent;

(c) the name and address of the institution or institutions the agent may represent;

(d) the authority for and conditions of approval; and

(e) any terms or conditions required by the department.

(5) No permit shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9210 by Sec. 10, Ch. 296, L. 1974; R.C.M. 1947, 75-9210.

20-30-303. Denial of application for license or permit. (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing

the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor, and the opportunity of the applicant for a hearing before the department.

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions represented or to be represented by the applicant.

History: En. 75-9211 by Sec. 11, Ch. 296, L. 1974; R.C.M. 1947, 75-9211.

20-30-304. Revocation of license or permit. (1) If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this chapter has violated or is in violation of this chapter or criteria established under this chapter, the department may revoke the license or permit as provided.

(2) A decision respecting revocation of a license or permit shall be made after opportunity for hearing before the department. Matters concerning the revocation of licenses or permits, hearings, and judicial review will be handled as contested cases under the Administrative Procedure Act.

History: En. 75-9212 by Sec. 12, Ch. 296, L. 1974; amd. Sec. 2, Ch. 211, L. 1975; R.C.M. 1947, 75-9212.

20-30-305. Bond required. (1) At the time application is made for license, the department may require the postsecondary educational institution making the application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the postsecondary educational institution and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for 2 years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of $1,000. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of $1,000. The bond shall be conditioned to provide indemnification to any student, enrollee, or the parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the agent and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of

written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for 2 years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety is released. A surety on any bond filed under the provisions of this section may be released after the surety has served written notice to the department 40 days prior to the release. The release does not discharge or otherwise affect any claim filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least 30 days' written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being terminated.

History: En. 75-9216 by Sec. 16, Ch. 296, L. 1974; amd. Sec. 38, Ch. 266, L. 1977; R.C.M. 1947, 75-9216.

20-30-306. Fees. All fees collected pursuant to the provisions of this chapter shall be deposited in the general fund, and no fees collected under the provisions of this chapter shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

(1) The initial application fee for a license shall be $50.

(2) The renewal fee for a license shall be $25.

(3) The initial fee for permit shall be $25.

(4) The renewal fee for permit shall be $10.

History: En. 75-9217 by Sec. 17, Ch. 296, L. 1974; R.C.M. 1947, 75-9217.

Part 4

Remedies and Enforcement

20-30-401. Civil relief. Any person claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent, or both, which act or practice violates the criteria established by the department under 20-30-201 or the prohibitions in 20-30-203, may sue in a court of proper jurisdiction of this state the institution or the agent, or both, and their sureties for the amount of the damage or loss and if successful shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

History: En. 75-9215 by Sec. 15, Ch. 296, L. 1974; amd. Sec. 37, Ch. 266, L. 1977; R.C.M. 1947, 75-9215.

20-30-402. Enforceability of notes and contracts. (1) If the person to whom educational services are to be rendered or furnished by a postsecondary educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

(a) that the law of another state shall apply;

(b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;

(c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and

(d) that fixes venue.

(2) No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any postsecondary educational institution located in Montana unless the institution shall have received a license or by any postsecondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any postsecondary educational institution or any person, association, partnership, or corporation controlling, controlled by, or held in common ownership with such institution loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by said institution shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan". In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render or furnish such services or facilities by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

History: **En. 75-9219 by Sec. 19, Ch. 296, L. 1974; R.C.M. 1947, 75-9219.**

20-30-403. Violations — criminal — penalty. Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate the provisions of 20-30-203 or who shall willfully fail or refuse to deposit with the department the records required by 20-30-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

History: **En. 75-9220 by Sec. 20, Ch. 296, L. 1974; R.C.M. 1947, 75-9220.**

20-30-404. Jurisdiction of courts — service of process. (1) Any postsecondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state or which offers to award or awards any educational credentials to a resident of this state submits such institution and, if a natural person, his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this by injunction pursuant to 20-30-405.

(2) Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendent within or outside the state, in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons had been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

History: **En. 75-9221 by Sec. 21, Ch. 296, L. 1974; R.C.M. 1947, 75-9221.**

20-30-405. Enforcement — injunction. (1) The county attorney of any county in which a postsecondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings or criminal proceedings pursuant to 20-30-403) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity for the purpose of enjoining such violation or for an order directing compliance with the provisions of this chapter and all rules and orders issued by the department.

History: **En. 75-9222 by Sec. 22, Ch. 296, L. 1974; R.C.M. 1947, 75-9222; amd. Sec. 14, Ch. 384, L. 1979.**

CHAPTER 31

FIRE SERVICES TRAINING SCHOOL

Part 1 — General Provisions

Section

20-31-101. Definitions.
20-31-102. Fire services training school — creation — supervision by board of public education.

20-31-103. Purpose of school.
20-31-104. Coordination with other agencies.

Part 2 — Director

20-31-201. Director responsible to board.
20-31-202. Duties of director.

Part 3 — Advisory Council

20-31-301. Organization — procedural rules — compensation of members.
20-31-302. Duties.

Part 4 — Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements.
20-31-402. Cost recovery fee.

Part 1

General Provisions

20-31-101. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of public education provided for in Article X, section 9, subsection (3) of the 1972 Montana constitution and 2-15-1507.

(2) "Council" means the fire services training advisory council provided for in 2-15-1519.

(3) "Director" means the director of the fire services training school provided for in 2-15-1518.

History: En. by Code Commissioner, 1979.

20-31-102. Fire services training school — creation — supervision by board of public education. There is a fire services training school. The fire services training school is allocated to the board of public education for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of public education. The general supervision of the school is vested in the board of public education.

History: En. 75-7716 by Sec. 1, Ch. 104, L. 1977; R.C.M. 1947, 75-7716.

20-31-103. Purpose of school. The purpose of the fire services training school is to:

(1) reduce the loss of life and personal injury caused by fire;

(2) reduce property damage and loss caused by fire;

(3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

(4) provide training in investigating the cause of fire;

(5) develop new methods of fire prevention and firefighting;

(6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention.
History: En. 75-7717 by Sec. 2, Ch. 104, L. 1977; R.C.M. 1947, 75-7717.

20-31-104. Coordination with other agencies. The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of public education.
History: En. 75-7725 by Sec. 10, Ch. 104, L. 1977; R.C.M. 1947, 75-7725.

Part 2

Director

20-31-201. Director responsible to board. The director is responsible to the board for carrying out the provisions of this chapter.
History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

20-31-202. Duties of director. The director shall appoint a staff and execute policies and programs established by the board of public education for the fire services training school. The director is responsible for the direction of staff and operation of the school.
History: En. 75-7722 by Sec. 7, Ch. 104, L. 1977; R.C.M. 1947, 75-7722.

Part 3

Advisory Council

20-31-301. Organization — procedural rules — compensation of members. (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of public education.

(3) Members of the council shall receive compensation under 2-18-501 through 2-18-503.
History: En. 75-7719 by Sec. 4, Ch. 104, L. 1977; R.C.M. 1947, 75-7719.

20-31-302. Duties. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.
History: En. 75-7720 by Sec. 5, Ch. 104, L. 1977; R.C.M. 1947, 75-7720.

Part 4

Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements. The board of public education may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

History: En. 75-7723 by Sec. 8, Ch. 104, L. 1977; R.C.M. 1947, 75-7723.

20-31-402. Cost recovery fee. The board of public education may establish a cost recovery fee for training of commercially employed firefighters, and such fees shall be deposited to the general fund.

History: En. 75-7724 by Sec. 9, Ch. 104, L. 1977; R.C.M. 1947, 75-7724.

TITLE 21

RESERVED

TITLE 22

LIBRARIES, ARTS, AND ANTIQUITIES

Ch.
1. Libraries.
2. Arts.
3. Antiquities.

CHAPTER 1

LIBRARIES

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Part 1

State Library Commission

22-1-101. State library commission established. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the university of Montana, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve 1, 2, and 3 years respectively. As these terms expire, annually thereafter one person shall be appointed for a term of 3 years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 1, Ch. 184, L. 1929; re-en. Sec. 1575.1, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1, Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965; amd. Sec. 23, Ch. 439, L. 1975; R.C.M. 1947, 44-127.

22-1-102. Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 2, Ch. 184, L. 1929; re-en. Sec. 1575.2, R.C.M. 1935; amd. Sec. 2, Ch. 91, L. 1945; amd. Sec. 2, Ch. 55, L. 1961; amd. Sec. 7, Ch. 453, L. 1977; R.C.M. 1947, 44-128.

22-1-103. State library commission — authority. The state library commission shall have the power to:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) accept and expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds shall be disbursed;

(6) provide library services for the blind and physically handicapped;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules for the certification of librarians;

(9) designate areas for the establishment of federations of libraries and designate the headquarters library for such federations.

History: **En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).**

Part 2

State Library

22-1-201. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

History: **En. 44-126.1 by Sec. 1, Ch. 3, L. 1977; R.C.M. 1947, 44-126.1.**

22-1-202 through 22-1-210 reserved.

22-1-211. Definitions. As used in this part, the following definitions apply:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission, and agency of the state and, where applicable, all subdivisions of each.

History: **En. Sec. 1, Ch. 261, L. 1967; R.C.M. 1947, 44-132.**

22-1-212. Creation of distribution center. There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. To this end the state library commission shall make such rules necessary to carry out the provisions of this part.

History: **En. Sec. 2, Ch. 261, L. 1967; R.C.M. 1947, 44-133.**

22-1-213. State agency publications to be deposited in state library — interlibrary loan — sale publications. Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required where the quantity desired will necessitate additional printing or other expense to such agency.

History: **En. Sec. 3, Ch. 261, L. 1967; R.C.M. 1947, 44-134.**

22-1-214. Depository libraries — eligibility. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress, the midwest interlibrary center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: **En. Sec. 4, Ch. 261, L. 1967; R.C.M. 1947, 44-135.**

22-1-215. Available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: **En. Sec. 5, Ch. 261, L. 1967; R.C.M. 1947, 44-136.**

22-1-216. Current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of their current state publications and a copy of their mailing and/or exchange lists.

History: **En. Sec. 6, Ch. 261, L. 1967; R.C.M. 1947, 44-137.**

22-1-217. No general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: **En. Sec. 7, Ch. 261, L. 1967; R.C.M. 1947, 44-138.**

22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the secretary of state in connection with his duties under 2-15-401(13);

(3) the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and

(4) the legislative council in connection with its duties under 5-11-203, as amended.

History: En. Sec. 8, Ch. 261, L. 1967; amd. Sec. 2, Ch. 3, L. 1977; R.C.M. 1947, 44-139; amd. Sec. 11, Ch. 138, L. 1979.

Part 3

Free Public Libraries

22-1-301. Definition. Wherever the word "city" is used in this part, it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227.

22-1-302. Purpose. It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.

22-1-303. Creation of public library. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than 10% of the resident taxpayers, whose names appear upon the last completed assessment roll of the city or county, being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of whether a free public library shall be established.

(b) If such a petition is submitted for a city, the petition must be signed by resident taxpayers of said city.

(c) If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city located in said county which may already have established a free public library for such city.

(d) If such petition specifically asks that a special election be called and such petition is signed by 35% of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

(e) If at such election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library or to contract with any city or county for library service to be rendered to the inhabitants of such city or county.

History: En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219.

22-1-304. Tax levy — special library fund — bonds. (1) The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 3 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 4 ½ mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library.

(3) No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(4) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220.

22-1-305. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

History: En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.

22-1-306. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.

22-1-307. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.

22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library.

(2) The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments shall be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there shall be appointed before July 1 of each year in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession.

(5) Following such appointments, in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for 1-year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221.

22-1-309. Trustees — powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

22-1-310. Chief librarian — personnel — compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.

22-1-311. Use of library — privileges. Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.

22-1-312. Cooperation and merger. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes. After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.

22-1-314. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.

22-1-315. City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

History: En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.

22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract.

(3) The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library.

(5) The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1.

22-1-317. City-county library — board of trustees. (1) A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they consider necessary for 1-year terms.

(5) The board of trustees shall have the same powers and duties as the board of trustees of a city library or a county library.

History: **En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2.**

Part 4

Library Systems

22-1-401. Policy. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: **En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).**

22-1-402. Library systems — definition. Library systems shall include library federations or library networks, as defined hereafter:

(1) (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation.

(b) Two or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract.

(c) The expense of providing library services for the library federation shall be apportioned between or among the towns, cities, and counties involved on such basis as shall be agreed upon in the contract. The treasurer of one of the participating units, as shall be provided in the contract, shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semiannually to him all moneys collected for the free library fund in their respective jurisdiction.

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of information or to provide specific library services not provided in existing library federations.

History: **En. Sec. 1, Ch. 132, L. 1939; amd. Sec. 2, Ch. 357, L. 1974; R.C.M. 1947, 44-212.**

22-1-403. Participation in the federation. (1) When a library federation shall have been established, the legislative body of any government unit in the designated library federation area may decide, with the concurrence of the board of trustees of its library if it is maintaining a library, to participate in the library federation. Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation and property within its boundaries shall be subject to taxation for library federation purposes.

(2) The board of regents of higher education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the Montana university system is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this part.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963; amd. Sec. 3, Ch. 357, L. 1974; R.C.M. 1947, 44-213.

22-1-404. Board of trustees — coordinator. (1) In a library federation there shall be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees.

(2) The librarian of the headquarters library shall serve as the coordinator of the federation and as a nonvoting member of the federation advisory board of trustees.

History: (1)En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974; Sec. 44-214, R.C.M. 1947; (2)En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; Sec. 44-131, R.C.M. 1947; R.C.M. 1947, 44-131(part), 44-214.

22-1-405. Boards of trustees — authority — resolution of disagreements. (1) The board of trustees of a library federation shall act as an advisor to the participating libraries and their boards of trustees.

(2) Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in 22-1-309.

(3) Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission.

History: En. 44-214.1 by Sec. 5, Ch. 357, L. 1974; R.C.M. 1947, 44-214.1.

22-1-406 through 22-1-410 reserved.

22-1-411. Appropriations to support library federations. After a library federation shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged shall appropriate money annually for the support of the library or library services, and so far as possible, the taxes levied and collected for this purpose shall be levied and collected within the territory to be served.

History: En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974; R.C.M. 1947, 44-215.

22-1-412. Purpose. It is the purpose of 22-1-412 through 22-1-416 to establish a program whereby state funds appropriated to the Montana state library commission may be allocated among three different grant programs. Such program of state funding is intended to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402.

History: En. 44-304 by Sec. 1, Ch. 416, L. 1975; R.C.M. 1947, 44-304.

22-1-413. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation to three types of grant programs according to 22-1-415 and shall make grants to duly constituted library federations according to program applications submitted to and approved by the commission. Federations receiving grant moneys shall report semiannually to the commission concerning the progress of the various projects for which state funding grants have been received, which report shall contain an accounting for all grant funds received.

History: En. 44-305 by Sec. 2, Ch. 416, L. 1975; R.C.M. 1947, 44-305.

22-1-414. Definitions of grant programs. (1) Basic grants are annual grants given to all federation headquarters libraries for the purpose of improving public library services within the federation and enabling public libraries within the federation to achieve and maintain the Montana public library standards as adopted and amended from time to time by the Montana state library commission.

(2) Establishment grants are grants to federation headquarters libraries in order to provide basic library service to governmental units participating in library federations for the first time. The local governmental unit must contract with the headquarters library for federation services according to the provisions of 22-1-403 and must contribute to the costs of providing such services. All funds will be administered by the federation headquarters library.

(3) Special project grants are grants to federation headquarters libraries to implement services not provided for in basic grants or to provide construction funds or remodeling funds. Grants for construction or remodeling must be equally matched by local funds; grants for services may fund the full cost of such services.

History: En. 44-306 by Sec. 3, Ch. 416, L. 1975; R.C.M. 1947, 44-306.

22-1-415. Allocation of funds by grant program. The Montana state library commission shall allocate state funding appropriations among three grant programs on the following basis: 60% of each annual appropriation shall be allocated to the basic grant program; 30% of each annual appropriation shall be allocated to the establishment grant program; and 10% of each annual appropriation shall be allocated to the special project grant program.

History: En. 44-307 by Sec. 4, Ch. 416, L. 1975; R.C.M. 1947, 44-307.

22-1-416. Formulas for distribution of grants. (1) The formula for distribution of basic grants among federations will be determined by multiplying population times area times percentage of local support. The population figure shall be the population of the area served by the federation as of the latest published federal census. The area figure shall be the number of square miles of the area served by the federation. The local support figure shall be the average of the percentage of the maximum allowable mill levy for public library services of each governmental unit participating in the federation actually expended for public library purposes by each such governmental unit from all sources. In computing the percentage of local support, the amount actually expended for public library services shall not include building construction and remodeling funds but it shall include federal or state revenue-sharing moneys, all-purpose levies, library fund levies, local general fund moneys, in-kind services, or any other local public moneys expended for public library services. In computing the percentage of local support for a federation, no participating governmental unit shall be included at more than 100% of local support, and in computing the basic grant, no federation as a whole shall be included at more than 100% of local support.

(2) Applications for basic grants for the following fiscal year must be submitted to the Montana state library commission by April 30 preceding the fiscal year.

(3) Establishment grants may be applied for any time during the biennium until January 1 of the last year of the biennium. Any funds not granted by January 1 of the last year of the biennium will be allocated to special project grants and distributed by the Montana state library commission according to the special project grant plans approved.

(4) Applications and plans for special project grants shall be submitted no later than March 1 of the second year of the biennium. Any moneys not granted by April 1 of the second year of the biennium will be allocated to the basic grant fund and distributed according to the basic grant formula for the following fiscal year.

History: En. 44-308 by Sec. 5, Ch. 416, L. 1975; R.C.M. 1947, 44-308.

Part 5

Law Library

22-1-501. State law library created. The library heretofore known as a department of the state library of Montana and called "the law library" shall become a separate and distinct library designated the "state law library of the state of Montana". The collections of laws, decisions of courts, law reports, textbooks, legal periodicals, and miscellaneous books and journals together with pamphlets, papers, maps, charts, and manuscripts now in the law library in the capitol building or belonging to such law library or hereafter acquired by or donated to the law library shall constitute the library hereby established, and the title to all of the property constituting the same now or hereafter shall be in the state of Montana, subject to the custody and control of the library board established herein.

History: En. Sec. 1, Ch. 153, L. 1949; R.C.M. 1947, 44-401.

22-1-502. Location — control by board of trustees. The state law library of the state of Montana shall be located in the capitol building at Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees consisting of the chief justice and the justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 153, L. 1949; amd. Sec. 1, Ch. 142, L. 1977; R.C.M. 1947, 44-402.

22-1-503. Authority of board. The powers and duties of said board are as follows:

(1) to make rules, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public and the office hours of the library;

(2) to appoint a librarian and prescribe the duties of such librarian when not otherwise provided for by law;

(3) to sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund;

(4) to see that the books and other properties of the library are maintained in good order and repair and are protected from theft or injury;

(5) to draw from the state treasury at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals, and other works and properties therefor, including complete sets of statutory laws and codified laws of the United States of America, of the several states of the union, and of other jurisdictions, any moneys in the fund and available for such purposes;

(6) to report as provided in 2-7-102;

(7) to establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States as may be for the benefit and advantage of the state law library and promote the acquisition of books and other works from such sources as may be useful to those resorting to the facilities of the state law library.

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969; R.C.M. 1947, 44-403.

22-1-504. Duties of librarian. The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

History: En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(2).

22-1-505. Use of library. The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislature, the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

History: En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(1).

22-1-506. Liability for injury to books or failure to return. Every person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by him is liable to the state in three times the value thereof if such book is not replaced by a new one or another book of identical title, in good order and condition; and no statute of limitations shall ever be effective against the claim of the state under this section.

History: **En. Sec. 6, Ch. 153, L. 1949; R.C.M. 1947, 44-406.**

Part 6

Interstate Library Compact

22-1-601. Library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;

(2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;

(3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into

pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: **En. Sec. 1, Ch. 119, L. 1967; R.C.M. 1947, 44-601.**

22-1-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: **En. Sec. 2, Ch. 119, L. 1967; R.C.M. 1947, 44-602.**

CHAPTER 2

ARTS

Part 1 — Montana Arts Council

Section

22-2-101. Montana arts council established.
22-2-102. Membership of council — appointment.
22-2-103. Council membership — tenure — compensation.
22-2-104. Executive committee.
22-2-105. Administrative officers and employees — compensation.
22-2-106. Council duties.
22-2-107. Gifts and donations.
22-2-108. Authorization for council to enter certain contracts.
22-2-109. Financing of council.

Part 2 — Montana Folklife Project

22-2-201. Short title.
22-2-202. Definitions.
22-2-203. Montana folklife project created.
22-2-204. Powers of the Montana folklife project.
22-2-205. Duties.

Part 1

Montana Arts Council

22-2-101. Montana arts council established. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: **En. Sec. 1, Ch. 2, L. 1967; R.C.M. 1947, 82-3601.**

22-2-102. Membership of council — appointment. The Montana arts council shall consist of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: **En. Sec. 2, Ch. 2, L. 1967; R.C.M. 1947, 82-3602.**

22-2-103. Council membership — tenure — compensation. The term of office of each member shall be 5 years; provided, however, that of the members first appointed, five shall be appointed for terms of 1 year, five for terms of 3 years, and five for terms of 5 years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services but shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of their duties as members of the council.

History: **En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975; R.C.M. 1947, 82-3603.**

22-2-104. Executive committee. The council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: **En. Sec. 4, Ch. 2, L. 1967; R.C.M. 1947, 82-3604.**

22-2-105. Administrative officers and employees — compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: **En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974; R.C.M. 1947, 82-3605.**

22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation therein;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) report as provided in 2-7-102.

History: **En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969; R.C.M. 1947, 82-3606.**

22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national foundation on the arts.

History: **En. Sec. 7, Ch. 2, L. 1967; amd. Sec. 11, Ch. 3, L. 1977; R.C.M. 1947, 82-3607.**

22-2-108. Authorization for council to enter certain contracts. The council may contract with individuals, organizations, and institutions for services or cooperative endeavors furthering the objectives of the council's programs.

History: **En. Sec. 8, Ch. 2, L. 1967; R.C.M. 1947, 82-3608.**

22-2-109. Financing of council. The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development, and operation and programs of the council.

History: **En. Sec. 9, Ch. 2, L. 1967; R.C.M. 1947, 82-3609.**

Part 2

Montana Folklife Project

22-2-201. Short title. This part may be cited as the "Montana Folklife Preservation Act".

History: **En. Sec. 1, Ch. 531, L. 1979.**

Compiler's Comments

Expiration date. Sec. 6, Ch. 531, L. 1979, provided: "This act expires on July 1, 1981."

22-2-202. Definitions. As used in this part, the following definitions apply:

(1) "Montana folklife" means the traditional customs and culturally based expressions shared by peoples within any area of the state. Montana folklife includes community-based traditional arts such as folksongs and instrumental music, dance, storytelling, vernacular, architecture, handcrafts, skills, and other forms of community-based expressions which serve to identify and symbolize the cultural heritage of Montana.

(2) "Montana folklorist" means a professional folklorist having an advanced degree in folklore or related experience.

History: **En. Sec. 2, Ch. 531, L. 1979.**

22-2-203. Montana folklife project created. (1) There is created a Montana folklife project. It is the purpose of the project to identify, document, and preserve and make more accessible to the public the traditional folklife of Montana. Such areas of folklife heritage shall include but not be limited to the traditions of ranching and farming, logging, mining, trapping, exploration, Indian culture, and cowboy life.

(2) Montana folklife project shall be under the authority of the Montana arts council, which shall contract with a professional folklorist to carry out the project.

History: **En. Sec. 3, Ch. 531, L. 1979.**

22-2-204. Powers of the Montana folklife project. The Montana folklife project, with the approval of the Montana arts council, shall exercise the following powers:

(1) The Montana folklife project may accept gifts and grants for the support of this project; receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be for the purposes of this project; and use, sell, or otherwise dispose of such property for the purpose of carrying out the functions of the project.

(2) The Montana folklife project may enter into contracts with and award grants to individuals, groups, private radio and television broadcasters, museums, educational institutions, and corporations for the purpose of:

(a) supporting and promoting research, scholarship, and training in Montana folklife;

(b) sponsoring and promoting live performances, festivals, exhibits, media presentations, publications, and workshops related to Montana folklife;

(c) purchasing, producing, and supporting presentations and materials especially designed for classroom use representing or illustrating some aspect of Montana folklife;

(d) procuring, producing, and retaining, in an appropriate archive, audio and visual records, including still and motion picture film, records, audio and visual magnetic tape recordings, written records, and manuscripts that document some aspect of Montana folklife;

(e) establishing procedures for loaning or making available any item of the folklife collection of any individual or group; and

(f) developing and implementing other projects to identify, document, and preserve and make more accessible to the public Montana's folklife heritage.

History: **En. Sec. 4, Ch. 531, L. 1979.**

22-2-205. Duties. The Montana folklife project shall:

(1) cooperate with the Montana university system, the Montana historical society, and other agencies of this state that may have an interest in the folk cultural heritage of Montana;

(2) sponsor, encourage, direct, and engage in research into the folklife of this state;

(3) obtain for state documentation matters significant to the preservation and presentation of Montana folklife;

(4) assist local communities who wish to carry out their own local folklife projects.

History: En. Sec. 5, Ch. 531, L. 1979.

CHAPTER 3

ANTIQUITIES

Part 1 — Historical Society

Section
22-3-101. Historical society.
22-3-102. Definitions.
22-3-103. Historical library — independence from other libraries, museums, or galleries.
22-3-104. Appointment and qualifications of board of trustees.
22-3-105. Compensation and expenses of trustees.
22-3-106. Executive committee.
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Part 2 — Preservation of Records

22-3-201. Public policy.
22-3-202. Archives created — appointment, duties, and compensation of archivist.
22-3-203. Preservation of noncurrent records of permanent value.
Sections 22-3-204 through 22-3-210 reserved.
22-3-211. Historic records network — creation — purpose.
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Part 3 — Veterans' and Pioneers' Memorial Building

22-3-301. Veterans' and pioneers' memorial building.
22-3-302. Use of building.
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Part 4 — Antiquities

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22-3-421. Definitions.
22-3-422. Duties of preservation review board.
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22-3-431. Registration of heritage properties.
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22-3-435. Report of discovered heritage properties or paleontological remains.
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22-3-441. Restrictions on reproduction or sale of heritage property and paleontological remains.
22-3-442. Criminal penalty.

Part 1

Historical Society

22-3-101. Historical society. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana entitled "An Act to Incorporate the Historical Society of Montana", approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "An Act Concerning the Historical Society for the State of Montana and Making an Appropriation Therefor" and by "An Act to Perpetuate the Historical Society of the State of Montana", approved March 1, 1949, is hereby continued and perpetuated as the Montana historical society and as such constitutes an agency of state government for the use, learning, culture, and enjoyment of the citizens of the state and for the acquisition, preservation, and protection of historical records, art, archival, and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments.

History: En. Sec. 1, Ch. 47, L. 1963; R.C.M. 1947, 44-516.

22-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Society" means the Montana historical society and includes:

(a) the historical library and its contents;

(b) any museums and art galleries and their contents acquired by the trustees;

(c) any historical places, sites, or monuments acquired or developed by the society;

(d) any divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

(4) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular and generally of the region.

(5) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records.

History: En. Sec. 2, Ch. 47, L. 1963; amd. Sec. 5, Ch. 3, L. 1977; amd. Sec. 1, Ch. 366, L. 1977; R.C.M. 1947, 44-517.

22-3-103. Historical library — independence from other libraries, museums, or galleries. (1) There is a historical library, to be maintained and operated by the Montana historical society.

(2) The historical library and any historical museum administered by the society in accordance with the provisions of this part shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana.

History: (1)En. 44-515.1 by Sec. 4, Ch. 3, L. 1977; Sec. 44-515.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 47, L. 1963; amd. Sec. 6, Ch. 3, L. 1977; Sec. 44-518, R.C.M. 1947; R.C.M. 1947, 44-515.1, 44-518.

22-3-104. Appointment and qualifications of board of trustees. (1) The government and administration of the society are vested in a board of 15 trustees appointed by the governor, by and with the consent of the senate. Three each of the original members of the board shall be appointed for 1-, 2-, 3-, 4-, and 5-year terms. An appointment to replace a member whose term has expired shall be for 5 years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

(2) Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest. The governor, insofar as possible, shall appoint trustees from the various geographical areas of the state.

(3) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archeologist.

(4) The governor shall appoint these professionals to the board of trustees as vacancies occur.

History: (1)En. Sec. 4, Ch. 47, L. 1963; Sec. 44-519, R.C.M. 1947; (2) thru (4)En. Sec. 5, Ch. 47, L. 1963; amd. Sec. 7, Ch. 3, L. 1977; amd. Sec. 1, Ch. 520, L. 1977; Sec. 44-520, R.C.M. 1947; R.C.M. 1947, 44-519, 44-520.

22-3-105. Compensation and expenses of trustees. Each member of the board of trustees is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for their travel expenses.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(3); amd. Sec. 1, Ch. 3, L. 1979.

22-3-106. Executive committee. The trustees may select an executive committee of five trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963; R.C.M. 1947, 44-521.

22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice-president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities;

(4) to create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display, where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to generally foster and encourage the fine arts and cultural activities in Montana;

(17) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere;

(18) to microfilm papers or documents in danger of disappearance or injury; and

(19) to coordinate the administration of the historic records network established in 22-3-211.

History: **En. Sec. 8, Ch. 47, L. 1963; amd. Sec. 1, Ch. 204, L. 1975; amd. Sec. 2, Ch. 366, L. 1977; R.C.M. 1947, 44-523.**

22-3-108. Function of director — employment of assistants. The director is fully responsible for the immediate direction, management, and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: **En. Sec. 9, Ch. 47, L. 1963; R.C.M. 1947, 44-524.**

22-3-109. Official seal. The design of the official seal of the society shall be substantially as follows: a central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background, and directly beneath it the figures "1865". The seal shall be 2 inches in diameter and surrounded by the words, "Montana Historical Society Seal".

History: **En. Sec. 10, Ch. 47, L. 1963; R.C.M. 1947, 44-525.**

22-3-110. Decor of quarters. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished, and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: **En. Sec. 11, Ch. 47, L. 1963; R.C.M. 1947, 44-526.**

22-3-111. Financing of society. The society may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions, and royalties on the display and sale of arts and crafts. All profits, revenues, royalties, or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development, and operation of the society.

History: **En. Sec. 12, Ch. 47, L. 1963; R.C.M. 1947, 44-527.**

22-3-112. Cultural and aesthetic projects grants. (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the board of trustees of the Montana historical society by December 1 of the year preceding the convening of a legislative session.

(2) The board of trustees of the Montana historical society shall present to the legislature by the 15th day of any legislative session a list of grant proposals to be made from the cultural and aesthetic projects account to any department, agency, board, commission, or other division of the state government or to any local government unit. These grant proposals shall be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

(3) The legislature must appropriate funds from this account before any grant is awarded.

(4) The grant proposals approved by the legislature shall be administered by the Montana historical society.

History: En. Sec. 2, Ch. 653, L. 1979.

Part 2

Preservation of Records

22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969; R.C.M. 1947, 82-3207.

22-3-202. Archives created — appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 108, L. 1969; R.C.M. 1947, 82-3208.

22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved.

History: En. Sec. 3, Ch. 108, L. 1969; amd. Sec. 1, Ch. 41, L. 1973; R.C.M. 1947, 82-3209.

22-3-204 through 22-3-210 reserved.

22-3-211. Historic records network — creation — purpose. (1) The trustees of the Montana historical society shall establish and coordinate the administration of an historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

History: **En. 44-523.1 by Sec. 3, Ch. 366, L. 1977; R.C.M. 1947, 44-523.1.**

22-3-212. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

History: **En. 44-523.2 by Sec. 4, Ch. 366, L. 1977; R.C.M. 1947, 44-523.2.**

22-3-213 through 22-3-220 reserved.

22-3-221. Storing and safekeeping of war records. The board of trustees of the Montana historical society is hereby authorized and directed to set apart a suitable room in the buildings under their jurisdiction for the storing and safekeeping of such archives, records, etc., of the grand army of the republic and the united Spanish war veterans, and said room shall be suitably furnished, and the librarian for the Montana historical society shall be custodian of said archives, records, etc.

History: **En. Sec. 1, Ch. 32, L. 1913; amd. Sec. 2, Ch. 97, L. 1915; re-en. Sec. 321, R.C.M. 1921; amd. Sec. 1, Ch. 96, L. 1927; re-en. Sec. 321, R.C.M. 1935; amd. Sec. 3, Ch. 93, L. 1953; R.C.M. 1947, 82-2502.**

Part 3

Veterans' and Pioneers' Memorial Building

22-3-301. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

History: **En. 78-201.1 by Sec. 8, Ch. 3, L. 1977; R.C.M. 1947, 78-201.1.**

22-3-302. Use of building. The veterans' and pioneers' memorial building shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the united Spanish war veterans of Montana, the veterans of foreign wars of Montana, the American legion of Montana, the disabled American veterans of Montana, the World War I veterans of Montana, the Montana historical society, the society of Montana pioneers, and the sons and daughters of Montana pioneers and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations and for the librarian and other employees of the Montana historical society.

History: **En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963; R.C.M. 1947, 78-202.**

22-3-303. Gifts for building. The state of Montana is hereby authorized to receive gifts, legacies, and donations of money or other property for the erection or maintenance of the memorial building herein provided for, and all such gifts, legacies, and donations are hereby dedicated to such purpose.

History: **En. Sec. 9, Ch. 204, L. 1945; R.C.M. 1947, 78-209.**

Part 4

Antiquities

22-3-401 through 22-3-413. Repealed. Sec. 16, Ch. 563, L. 1979.

22-3-414 through 22-3-420 reserved.

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Antiquities permit" means the permit granted for exploration or field investigations of heritage properties or paleontological remains provided for in 22-3-432.

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(4) "Historic preservation officer" means the officer provided for in 2-15-1512.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in 2-15-1512.

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979.

Compiler's Comments

Severability. Sec. 15, Ch. 563, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Statement of Intent. The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "HB 785 formally establishes the Historic Preservation Office and identifies its duties and responsibilities. This bill is not creating a new office, but simply renames the old one to conform with the accepted title shared by similar offices in states throughout the country. The duties and responsibilities are also the same and are those established by federal rules and regulations for Historic Preservation offices in all states and trust territories. Such duties and responsibilities are necessary for the state to qualify for historic preservation grant monies appropriated by Congress each year.

HB 785 requires that the State Historic Preservation Office maintain the required staffing to assure that federal funds will continue to come into Montana. As written, the committee is assured that the State Historic Preservation Office must meet the requirements, even if changes should be made when the legislature is not in session.

The proposed bill departs from the current Antiquities Act in the establishment of a Preservation Review Board, in concert with the federal designation.

The proposed Review Board will be increased to nine members, of which a majority are professionals trained in fields relating to historic preservation and archaeology. The bill mandates that one member will be the State Liaison Officer for the federal Land and Water Conservation Fund, and although it is not a federal requirement, the inclusion of the Liaison Officer is particularly important in Montana. The Liaison Officer is the Parks Director at the

Department of Fish and Game, and since many of the state parks and monuments are established around historic sites, participation of the Liaison Officer on the Review Board is crucial in coordinating efforts in the state.

The proposed legislation continues the Antiquities Permit section as exists in the current Antiquities Act, but this bill will clarify provisions for who qualifies for a permit and the permit system is expanded to include all state lands rather than only registered properties.

HB 785 will substitute the National Register of Historic Places for the little-known state register as the official listing of important historic or heritage properties. The adoption of the National Register designation will simplify the registering system and avoid needless duplication of efforts.

The proposed bill continues the penalties sections but increases protection for private landowners and allows prosecution for violation on private lands.

Most importantly, the bill provides for state agency participation in the protection of heritage properties through a coordinated effort with the Historic Preservation Office. Coordination and cooperation is essential in assuring adequate consideration of heritage properties and paleontological remains in the everyday affairs of state government."

Incorporation into State Antiquities Act. Sections 22-3-421 through 22-3-424, 22-3-431 through 22-3-435, 22-3-441, and 22-3-442 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the State Antiquities Act, Title 22, chapter 3, part 4, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in part 4, including 22-3-403. See 1-11-103(4).

22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; and

(5) act in an advisory capacity to the historic preservation office and to state agencies.

History: **En. Sec. 5, Ch. 563, L. 1979.**

22-3-423. Duties of historic preservation officer. The historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.

History: En. Sec. 6, Ch. 563, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Section 6 authorizes the historic preservation officer to carry out and enforce the provisions of sections 3 through 16. This may be done by rule."

22-3-424. Duties of state agencies. State agencies shall:

(1) adopt policies for the preservation of heritage properties and paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state is given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains.

History: En. Sec. 9, Ch. 563, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

22-3-425 through 22-3-430 reserved.

22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) For properties not owned by the state, the historic preservation officer may, upon approval by the preservation review board and after written approval by the landowner, nominate heritage properties to the register.

(3) For lands owned by the state, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate state agency and give public notice when any property is being considered for nomination. Unless state agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When a state agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final

decision on the proposed registration and prepare a statement responsive to the objections submitted.

History: En. Sec. 7, Ch. 563, L. 1979.

22-3-432. Antiquities permits. (1) No person may excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit may be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to man's knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings, and photographs, be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

History: En. Sec. 8, Ch. 563, L. 1979.

22-3-433. Environmental review process. (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action. However, where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for

the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

History: **En. Sec. 10, Ch. 563, L. 1979.**

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

22-3-434. Denial of applications. State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated; provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in 22-3-433.

History: **En. Sec. 11, Ch. 563, L. 1979.**

22-3-435. Report of discovered heritage properties or paleontological remains. Any person conducting activities, including survey, excavation, or construction, who discovers on any lands owned by the state any heritage property or paleontological remains as defined in 22-3-421 or who finds that an operation licensed or otherwise entitled by the state may damage heritage properties or paleontological remains on any lands owned by the state shall promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains.

History: **En. Sec. 12, Ch. 563, L. 1979.**

22-3-436 through 22-3-440 reserved.

22-3-441. Restrictions on reproduction or sale of heritage property and paleontological remains. (1) No person may reproduce or falsely identify any heritage property or paleontological remains with the intent to sell the property or remains as an original.

(2) No person may sell any heritage property or paleontological remains with the knowledge that the property or remains have previously been collected or excavated in violation of this section, 22-3-432, or 22-3-435.

History: **En. Sec. 13, Ch. 563, L. 1979.**

22-3-442. Criminal penalty. A person violating any provision of 22-3-432, 22-3-435, or 22-3-441 is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation of any provision of 22-3-432, 22-3-435, or 22-3-441 constitutes a distinct and separate offense.

History: **En. Sec. 14, Ch. 563, L. 1979.**

TITLE 23

PARKS, RECREATION, SPORTS, AND GAMBLING

Ch.
1. Parks.
2. Recreation.
3. Athletics.
4. Horse Racing.
5. Gambling.

CHAPTER 1

PARKS

Part 1 — State Parks

Section
23-1-101. Purpose.
23-1-102. Powers and duties of department of fish, wildlife, and parks.
23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners.
23-1-104. Connecting roads.
23-1-105. Fees and charges — golden years pass.
23-1-106. Rules — penalties.
23-1-107. Cooperation.
23-1-108. Acquisition of certain state parks, monuments, or historical sites.

Part 2 — State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park.
23-1-202. Rules governing use.

Part 1

State Parks

23-1-101. Purpose. For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (hereinafter referred to as department) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965; amd. Sec. 1, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-301; amd. Sec. 2, Ch. 218, L. 1979.

23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979.

23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation, or demise to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this section shall be given an appropriate name by the state board of land commissioners.

History: En. Sec. 1, Ch. 111, L. 1929; re-en. Sec. 1842.1, R.C.M. 1935; R.C.M. 1947, 62-312.

23-1-104. Connecting roads. The department of highways may construct, improve, and maintain, with state highway funds, connecting roads between existing state highways and state parks. Each road shall not exceed a total length of 10 miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973; R.C.M. 1947, 62-307.

23-1-105. Fees and charges — golden years pass. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided and to grant such concessions as it may deem advisable, except as provided in subsection (2). All moneys derived from the activities of the department shall be deposited in the state treasury in the earmarked revenue fund to the credit of the department.

(2) Any Montana resident as defined in 87-2-102 who is 65 years of age or older may purchase a "Montana state golden years pass" for $1 which,

when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967; amd. Sec. 1, Ch. 415, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-305.

23-1-106. Rules — penalties. (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

(2) Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

History: (1)En. Sec. 6, Ch. 48, L. 1939; amd. Sec. 2, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-306, R.C.M. 1947; (2)En. Sec. 3, Ch. 111, L. 1929; re-en. Sec. 1842.3, R.C.M. 1935; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965; amd. Sec. 5, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-314, R.C.M. 1947; R.C.M. 1947, 62-306, 62-314.

23-1-107. Cooperation. In carrying out the provisions of this part, the department may seek and accept the cooperation of other state and local agencies and the agencies of the federal government and may assist and cooperate with other state agencies, political subdivisions of the state, with neighboring states, and with the federal government in matters relating to acquiring, planning, establishing, developing, improving, or maintaining any park, parkway, recreational area, monument, historic site, or archaeological site.

History: En. Sec. 8, Ch. 48, L. 1939; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-308.

23-1-108. Acquisition of certain state parks, monuments, or historical sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife, and parks by December 1 of the year preceding the convening of a legislative session.

(2) The fish and game commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historical sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased.

History: En. Sec. 3, Ch. 653, L. 1979; amd. Sec. 2, Ch. 218, L. 1979.

Compiler's Comments

Commissioner correction. A reference to the department of fish and game in subsection (1) was changed to the department of fish, wildlife, and parks by the Code Commissioner, 1979, to reflect Sec. 2, Ch. 218, L. 1979.

Part 2

State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park. In order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the department is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965; amd. Sec. 3, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-310.

23-1-202. Rules governing use. The department shall make such rules governing the park's use, occupancy, and the protection of the remaining lands of the grant as necessary to promote and continue the use of all of the lands for biological station purposes. The park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. Nothing herein contained prevents the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965; amd. Sec. 4, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-311.

CHAPTER 2

RECREATION

Part 1 — Development of Outdoor Recreational Resources

Section
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23-2-644. Use of funds from fines and forfeiture.

Part 7 — Tramways

23-2-701. Policy of state.
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23-2-703. Tramways not common carriers or public utilities.
23-2-704. Unlawful to endanger life or cause damage.
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Part 1

Development of Outdoor Recreational Resources

23-2-101. Legislative findings — purpose. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this part to give authority to the department of fish, wildlife, and parks to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-401; amd. Sec. 2, Ch. 218, L. 1979.

23-2-102. Department of fish, wildlife, and parks to implement federal act. The department of fish, wildlife, and parks is hereby designated as the state agency to represent and act for the state for the purpose of implementing the Land and Water Conservation Fund Act of 1965.

History: En. Sec. 2, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-402; amd. Sec. 2, Ch. 218, L. 1979.

23-2-103. Compliance with federal act authorized — powers of department. The department of fish, wildlife, and parks shall do those things necessary to comply with the provisions of the Land and Water Conservation Fund Act of 1965. Among other things, the department of fish, wildlife, and parks may:

(1) prepare a comprehensive statewide outdoor recreational plan which shall contain an evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana and a program for implementation of the plan;

(2) accept and administer moneys paid by the secretary of the interior for approved projects;

(3) contract with other state agencies, cities, counties, and other political subdivisions of the state, private organizations, and agencies of the federal government;

(4) acquire, other than by eminent domain, and develop outdoor recreational areas and facilities and land and waters and interests in land and waters for such areas and facilities;

(5) for the purpose of implementing the Land and Water Conservation Fund Act of 1965, coordinate its activities with and represent the interests of all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-403; amd. Sec. 2, Ch. 218, L. 1979.

Parts 2 through 4 reserved

Part 5

Boats

23-2-501. Declaration of policy. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

History: En. Sec. 1, Ch. 285, L. 1959; R.C.M. 1947, 69-3501.

23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the division of motor vehicles to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(3) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(4) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(5) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(6) "Motorboat" means any vessel propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(7) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(8) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(9) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(10) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(11) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(12) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(13) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(14) "Waters of this state" means any waters within the territorial limits of this state.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973; amd. Sec. 5, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3502; amd. Sec. 2, Ch. 218, L. 1979.

23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is permitted by him to be operated, the identification number of such vessel, the departure date and time, and the expected time of return. The record shall be preserved for at least 6 months.

(2) Neither the owner of a boat livery nor his agent or employee shall permit any motorboat or any vessel permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant thereto.

History: En. Sec. 7, Ch. 285, L. 1959; amd. Sec. 9, Ch. 124, L. 1977; R.C.M. 1947, 69-3507.

23-2-504. Filing of rules. A copy of the rules adopted pursuant to this part and of any amendments thereto shall be filed in the office of the department and in the office of the secretary of state. Rules shall be published by the department in a convenient form and made easily available to all vessel operators.

History: En. Sec. 16, Ch. 285, L. 1959; amd. Sec. 15, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.

23-2-505. Owner's civil liability. The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable, however, unless such vessel is being used with his or her express or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

History: En. Sec. 15, Ch. 285, L. 1959; R.C.M. 1947, 69-3515.

23-2-506. Enforcement. It shall be the duty of the department to enforce the sections of this law. The state fish, wildlife, and parks director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended.

History: En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973; amd. Sec. 17, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3517; amd. Sec. 2, Ch. 218, L. 1979.

23-2-507. Penalty. Violations of any section of this part unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. The moneys shall be used only by the department for enforcement of this part, as amended.

History: En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973; amd. Sec. 18, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3518.

23-2-508 through 23-2-510 reserved.

23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect; and

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) Any person who operates a motorboat on the waters of this state without displaying the appropriate numbers and license decals as required by this section is punishable by a fine not to exceed $10. However, the arresting officer may issue a courtesy citation in lieu of the penalty provided for in this subsection.

History: En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973; amd. Sec. 1, Ch. 306, L. 1975; amd. Sec. 6, Ch. 124, L. 1977; R.C.M. 1947, 69-3503; amd. Sec. 1, Ch. 136, L. 1979.

23-2-512. Identification number. (1) The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat is owned or taxable on forms prepared and furnished by the division of motor vehicles. The application must be signed by the owner of the motorboat and be accompanied by a fee of $1. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the division of motor vehicles, stating the number assigned to the motorboat and the name and address of the owner.

(2) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor, who shall enter on the application, in a space to be provided for that purpose, the market value and taxable value of the motorboat for the year for which the application for registration is made.

(3) The applicant, upon the filing of the application, shall pay to the county treasurer the registration fee and the personal property taxes assessed

against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) Should the ownership of a motorboat change, a new application form with fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(5) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the division of motor vehicles must be in conformity.

(6) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(7) Certificates of number expire on April 30 of each year and may not be in effect unless renewed under this part.

(8) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat does not terminate the certificate of number.

(9) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The division of motor vehicles may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(10) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat by its identifying number may be carried as to interfere with the motorboat's identification. No number other than the number and license decal assigned to a motorboat or granted reciprocity under this part

may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat whenever the motorboat is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, but a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(11) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(12) An owner of a motorboat must within a reasonable time notify the division of motor vehicles, giving the motorboat's identifying number and the owner's name when that motorboat becomes documented as a vessel of the United States or is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(1), (2), (3), (6) thru (14); amd. Sec. 2, Ch. 136, L. 1979.

23-2-513. Dealer's identification number. (1) A dealer or manufacturer may apply directly to the division of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The division of motor vehicles shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (10), as amended, except that no boat may be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(10), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(4), (5); amd. Sec. 3, Ch. 136, L. 1979.

23-2-514. Exemption from numbering provisions. A motorboat is not required to be numbered under this part if it is:

(1) covered by a number in full force and effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and license decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat whose owner is the United States, a state, or subdivision thereof;

(4) a ship's lifeboat.

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973; R.C.M. 1947, 69-3506; amd. Sec. 4, Ch. 136, L. 1979; amd. Sec. 1, Ch. 168, L. 1979.

23-2-515. License decals to be displayed. (1) Every Montana boat numbered in accordance with the provisions of 23-2-512 and 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon receipt of a certificate of tax of personal property showing payment of tax on the motorboat for the current year, shall issue a pair of decals prepared and furnished by the division of motor vehicles with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the division of motor vehicles and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974; R.C.M. 1947, 69-3504.1.

23-2-516 through 23-2-520 reserved.

23-2-521. Equipment. (1) Every motorboat or vessel shall have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that any person who has not reached his 12th birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while such motorboat or vessel is in motion;

(b) if carrying or using any inflammable or toxic fluid in any enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department which shall be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels shall display lights as prescribed by the department.

(4) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(5) Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have a wastewater holding system sealed to prevent the discharge of water carried waste products, whether treated or untreated, into the surrounding waters.

(6) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(7) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3505.

23-2-522. Discharge of waste from vessel prohibited. No person shall discharge or cause, permit, or suffer to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at any stream, river, or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973; amd. Sec. 11, Ch. 124, L. 1977; R.C.M. 1947, 69-3508.1.

23-2-523. Prohibited operation and mooring — enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973; amd. Sec. 10, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3508.

23-2-524. Passing rule and right-of-way. (1) When two vessels are approaching each other "head on" or nearly so (so as to involve risk of collision), each vessel shall bear to the right and pass the other vessel on its left side.

(2) When vessels approach each other obliquely or at right angles, the vessel approaching on the right side has the right-of-way.

(3) One vessel may overtake another on either side but shall grant right-of-way to the overtaken vessel.

(4) When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield the right-of-way to the sailboat in all cases.

History: En. Sec. 9, Ch. 285, L. 1959; R.C.M. 1947, 69-3509.

23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

History: **En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973; R.C.M. 1947, 69-3510.**

23-2-526. Overloading and overpowering. (1) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(2) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

History: **En. Sec. 11, Ch. 285, L. 1959; R.C.M. 1947, 69-3511.**

23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), shall render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and give his name, address, and identification of his vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. Any person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $100 shall immediately report such collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

(a) conduct an appropriate investigation of such collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department.

History: **En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973; amd. Sec. 12, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3512.**

23-2-528. Transmittal of information to U.S. officials. In accordance with any request duly made by an authorized official or agency of the

United States, any information compiled or otherwise available to the department pursuant to subsections (2) and (3) of 23-2-527, as amended, shall be transmitted to such official or agency of the United States.

History: En. Sec. 13, Ch. 285, L. 1959; amd. Sec. 13, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3513.

23-2-529. Water skis and surfboards. (1) No person may operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water skis, a surfboard, or similar device unless the operator is at least 12 years of age and there is a second person, at least 12 years of age, in the vessel to observe the person being towed.

(2) No person may engage in waterskiing, surfboarding, or similar activity or towing some other contrivances at any time between the hours from 1 hour after sunset to 1 hour before sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed.

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977; R.C.M. 1947, 69-3514; amd. Sec. 5, Ch. 136, L. 1979.

23-2-530. Education program. The department shall coordinate a statewide boat safety education program.

History: En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.1.

Part 6

Snowmobiles

23-2-601. Definition of terms. As used in this part, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

(1) "Certificate of ownership" means the document issued by the division of motor vehicles as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for a given registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner, as defined in subsection (7).

(6) "Operator" includes every person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes every person as defined herein, other than a lien holder or other person having a security interest only, holding a certificate of ownership to a snowmobile and entitled to the use or possession thereof.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana.

History: En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 421, L. 1977; R.C.M. 1947, 53-1012; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 363, L. 1979.

23-2-602. Report of stolen and recovered snowmobiles. The sheriff of every county of the state and the chief of police or commissioner of police of every city shall make an immediate report to the division of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided by the division. Upon receipt of such information, the division shall file the same in an index to be known as the "stolen and recovered snowmobile index". The division shall file reports of stolen and recovered snowmobiles reported to it from other states. Once a month the division shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of ownership may be issued under this part, the motor and serial number on the snowmobile for which such certificate is to be issued shall be checked against the stolen and recovered snowmobile index.

History: En. Sec. 6, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1977; amd. Sec. 11, Ch. 421, L. 1977; R.C.M. 1947, 53-1017.

23-2-603 through 23-2-610 reserved.

23-2-611. Certificate of ownership. (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the division of motor vehicles in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner by town and county;
(c) business or home mail address of the owner;
(d) name and address of any lien holder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number; and
(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this part were not in force and effect.

(5) Upon completion of the application on forms furnished by the division of motor vehicles, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the division, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership which shall contain that information in the application considered necessary by the division and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the division for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, $2 of which shall be forwarded by the county treasurer to the division of motor vehicles and deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974; amd. Sec. 2, Ch. 421, L. 1977; R.C.M. 1947, 53-1013; amd. Sec. 2, Ch. 363, L. 1979; amd. Sec. 24, Ch. 712, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 712 and Ch. 363, L. 1979. A composite was prepared by the Code Commissioner, 1979. Ch. 712 amended subsection (8) to reflect the change to a fee system for snowmobiles. Ch. 363 deleted subsection (8) in its entirety. Since the Ch. 712 amendment was merely to accommodate a substantive change made elsewhere, the Ch. 363 deletion was given effect in preparing the composite.

23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of this part, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the division of motor vehicles, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the division until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 shall be forwarded to the division of motor vehicles for deposit in the motor vehicle recording account of the earmarked revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the division of motor vehicles). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the division.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The division, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien.

History: (1), (2), (5)En. Sec. 3, Ch. 434, L. 1971; amd. Sec. 1, Ch. 124, L. 1977; amd. Sec. 2, Ch. 402, L. 1977; amd. Sec. 3, Ch. 421, L. 1977; Sec. 53-1014, R.C.M. 1947; (3), (4)En. 53-1013.1 by Sec. 1, Ch. 402, L. 1977; Sec. 53-1013.1, R.C.M 1947; R.C.M. 1947, 53-1013.1, 53-1014; amd. Sec. 3, Ch. 363, L. 1979; amd. Sec. 25, Ch. 712, L. 1979.

23-2-613. Lost or mutilated certificates. If any certificate of ownership is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate thereof, upon payment of a fee of $2.

History: En. Sec. 4, Ch. 434, L. 1971; amd. Sec. 4, Ch. 421, L. 1977; R.C.M. 1947, 53-1015; amd. Sec. 4, Ch. 363, L. 1979.

23-2-614. Exemptions. (1) The provisions of this part, with respect to registration, tax-paid decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof are exempt only from the payment of fees and shall otherwise comply with all the requirements of this part.

(2) The provisions of this part with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(1), (3); amd. Sec. 8, Ch. 363, L. 1979.

23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit shall be made at locations and upon forms prescribed by the department. The forms shall include but are not limited to:

(i) applicant's name and permanent address;

(ii) make, model, year, and serial number of the snowmobile; and

(iii) affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker shall be issued. The sticker shall be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and no certificate of ownership may be issued.

(4) All money collected by payment of fees under this section shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the department of fish, wildlife, and parks, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(5) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100.

History: En. 53-1016.1 by Sec. 6, Ch. 421, L. 1977; R.C.M. 1947, 53-1016.1; amd. Sec. 2, Ch. 218, L. 1979.

23-2-615.1. Fee in lieu of tax on snowmobiles. (1) There is a fee in lieu of tax on snowmobiles.

(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.

(3) The age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.

(4) The fee need not be paid by a dealer for snowmobiles that constitute inventory of the dealership.

History: En. Sec. 4, Ch. 712, L. 1979.

Compiler's Comments

Applicability. Sec. 31, Ch. 712, L. 1979, provided: "This act applies to motor homes, travel trailers, campers, and snowmobiles registered during and after 1980."

Incorporation into Existing Law. This section was enacted without any codification instructions. The apparent intent of the Legislature was that it become part of Title 23, chapter 2, part 6, and the Code Commissioner has codified it accordingly. This arrangement may affect other sections in part 6, including 23-2-641 and 23-2-642. See 1-11-103(4).

23-2-616. Registration and decals — application and issuance — use of certain fees. (1) No snowmobile may be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year.

(2) Application for registration shall be made to the county treasurer upon forms to be furnished by the division of motor vehicles for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) name and address of the owner;
(b) certificate of ownership number;
(c) make of the snowmobile;
(d) model name of the snowmobile;
(e) year of manufacture;
(f) a statement evidencing payment of the fee in lieu of property tax; and
(g) such other information as the division of motor vehicles may require.

(3) The application shall be accompanied by a decal fee of $2, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt which shall contain information considered necessary by the division of motor vehicles and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the division of motor vehicles and shall issue to the applicant a decal in the style and design prescribed by the division and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money shall be forwarded to the state treasurer and placed in the earmarked revenue fund to the credit of the department, with $1 designated for use in enforcing the purposes of this part and $1 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee shall be forwarded to the state treasurer and deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 17, Ch. 421, L. 1977; amd. Sec. 44, Ch. 566, L. 1977; R.C.M. 1947, 53-1025; amd. Sec. 5, Ch. 363, L. 1979; amd. Sec. 26, Ch. 712, L. 1979; (6)En. Sec. 17, Ch. 712, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 363 and Ch. 712, L. 1979. A composite was prepared by the Code Commissioner, 1979. Although Ch. 363 and Ch. 712 conflict in use of language, they do not conflict conceptually. In preparing the composite, changes were made to incorporate the concepts of both chapters.

23-2-617. Duplicate decal. In the event any decal indicating that the fee in lieu of property tax has been paid on a snowmobile for the current year is lost, mutilated, or becomes illegible, the person to whom the same was issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1 to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973; amd. Sec. 18, Ch. 421, L. 1977; R.C.M. 1947, 53-1025.1; amd. Sec. 27, Ch. 712, L. 1979.

23-2-618. Application for registration and decals to be made annually — grace periods. Application must be made annually to the county treasurer for registration and the issuance of a decal indicating that the fee in lieu of property tax has been paid for the current year. All registrations and decals expire on June 30 of each year.

History: En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974; amd. Sec. 1, Ch. 327, L. 1975; amd. Sec. 4, Ch. 124, L. 1977; amd. Sec. 3, Ch. 402, L. 1977; R.C.M. 1947, 53-1026; amd. Sec. 6, Ch. 363, L. 1979; amd. Sec. 28, Ch. 712, L. 1979.

23-2-619. Dealer registration certificate — use of fees. (1) A dealer registration certificate shall be issued in accordance with this part.

(2) The dealer application shall be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards which shall be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he shall maintain all his business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that he has sold 3 or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the division of motor vehicles may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money shall be deposited in the earmarked revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of this part and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. Sec. 3, Ch. 494, L. 1973; amd. Sec. 21, Ch. 421, L. 1977; R.C.M. 1947, 53-1029; amd. Sec. 7, Ch. 363, L. 1979.

23-2-620 through 23-2-630 reserved.

23-2-631. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that the street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible; the operator has received permission or is otherwise authorized for such travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or such operation has been specifically so authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) No snowmobile may be operated upon a public street or highway when permitted to do so by this part unless equipped with at least one headlamp and one taillamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street, or highway when allowed to do so under the provisions of this part shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway or who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana.

History: **En. Sec. 7, Ch. 434, L. 1971; amd. Sec. 12, Ch. 421, L. 1977; R.C.M. 1947, 53-1018.**

23-2-632. Unlawful operation on streets and highways. (1) It is unlawful for a person to operate a snowmobile on a public street or highway:

(a) at a rate of speed greater than provided by law for motor vehicles;

(b) while under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(c) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

(d) if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation of a snowmobile on a public street or highway by a person who by reason of age or physical or mental disability is incapable of operating the snowmobile safely under the prevailing circumstances.

History: **En. Sec. 8, Ch. 434, L. 1971; amd. Sec. 3, Ch. 124, L. 1977; amd. Sec. 13, Ch. 421, L. 1977; R.C.M. 1947, 53-1019; amd. Sec. 6, Ch. 136, L. 1979.**

23-2-633. Other unlawful operation. No person while operating a snowmobile may use the same:

(1) for the purpose of driving, rallying, or harassing any of the game animals, game birds, or fur-bearing animals of the state or any livestock. An owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; and the department of fish, wildlife, and parks, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles.

(2) to discharge a firearm from or upon a snowmobile;

(3) without a lighted headlight and taillight between the hours of dusk and dawn.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(1); amd. Sec. 2, Ch. 218, L. 1979.

23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. No snowmobile may be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) No new snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this part shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of this part, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with such other standards for measurement of sound level as the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands, with the permission of the owner, lessee, or custodian of the land; or

(b) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(part); amd. Sec. 9, Ch. 363, L. 1979.

23-2-635. Accidents involving snowmobiles. The owner or operator of a snowmobile, which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person or where property damage exceeds $100, shall report the accident or occurrence to a state or local law enforcement agency responsible for collecting reports of accidents involving motor vehicles.

History: En. Sec. 10, Ch. 434, L. 1971; R.C.M. 1947, 53-1021.

23-2-636 through 23-2-640 reserved.

23-2-641. Enforcement. (1) The following persons may enforce the provisions of this part: the enforcement officers employed by the department, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of this part, the attorney general of the state of Montana shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this part.

(2) The department's enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

History: Ap. p. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 15, Ch. 421, L. 1977; Sec. 53-1022, R.C.M. 1947; Ap. p. Sec. 5, Ch. 435, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 20, Ch. 421, L. 1977; Sec. 53-1028, R.C.M. 1947; R.C.M. 1947, 53-1022, 53-1028.

23-2-642. Penalties. (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in this part is a misdemeanor, punishable by a fine of not less than $10 or more than $50.

(2) A person who violates any other provision of this part or a rule adopted pursuant thereto shall pay a civil penalty of not less than $15 or more than $500 for each separate violation.

(3) A person who willfully violates any other provision of this part or a rule adopted pursuant thereto shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(4) A manufacturer who certifies that a new snowmobile can meet the sound-level limitations imposed by this part shall be subject to the penalty provisions of subsections (2) and (3) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound-level limitations imposed by this part constitutes a separate violation.

History: (1)En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; Sec. 53-1027, R.C.M. 1947; (2) thru (4)En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974; amd. Sec. 16, Ch. 421,

L. 1977; Sec. 53-1023, R.C.M. 1947; R.C.M. 1947, 53-1023, 53-1027(1); amd. Sec. 29, Ch. 712, L. 1979.

23-2-643. Regulation by local government precluded. No political subdivision of this state may prescribe further licensing or registration of snowmobiles, and no political subdivision may levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(2).

23-2-644. Use of funds from fines and forfeitures. All fines and forfeitures collected under this part relating to snowmobiles shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the earmarked revenue fund to the credit of the department to be used only for snowmobile safety and education.

History: En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; R.C.M. 1947, 53-1027(2).

Part 7

Tramways

23-2-701. Policy of state. In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 23-2-702, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area utilized by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules set forth by the department. The state, through the department, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 19, Ch. 124, L. 1977; R.C.M. 1947, 69-6601.

23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation which pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973; R.C.M. 1947, 69-6602.

23-2-703. Tramways not common carriers or public utilities. Passenger tramways shall not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971; amd. Sec. 21, Ch. 124, L. 1977; R.C.M. 1947, 69-6615.

23-2-704. Unlawful to endanger life or cause damage. (1) It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

(2) Any person who violates this section shall be guilty of a misdemeanor.

History: En. Secs. 16, 17, Ch. 436, L. 1971; R.C.M. 1947, 69-6616, 69-6617.

23-2-705 through 23-2-710 reserved.

23-2-711. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the department, provided that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the department. If an operator files an application with the department for the registration of a passenger tramway, which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the department takes final action on the pending application and shall have:

(1) issued a certificate to the operator; or

(2) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6605.

23-2-712. Application for registration. Each year on or before October 1, every operator of a passenger tramway shall apply to the department, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the department may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this part as specified in 23-2-701 and the rules promulgated by the department pursuant to 23-2-721.

History: En. Sec. 6, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6606.

23-2-713. Issuance of certificates. (1) The department shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) that the facts stated in the application are sufficient to enable the department to fulfill its duties under this part; and

(b) that each such passenger tramway sought to be registered complies with the rules of the department promulgated pursuant to 23-2-721.

(2) In order to satisfy itself that the conditions described in subsections (1)(a) and (1)(b) of this section have been fulfilled, the department may cause to be made such inspections described in 23-2-722 as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the department shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this part.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6607.

23-2-714. Fees. (1) The application for registration or supplemental application shall be accompanied by such annual fees as the department may fix from year to year, not to exceed the following annual fees:

(a) passenger tramways described in subsections (5)(e) and (5)(f) of 23-2-702, $25 each;

(b) passenger tramways described in subsections (5)(c) and (5)(d) of 23-2-702, $50 each;

(c) passenger tramways described in subsections (5)(a) and (5)(b) of 23-2-702, $100 each.

(2) All fees collected by the department shall be deposited in the general fund. It is the legislature's intent that such fees and assessments generate sufficient revenue for a general fund appropriation for contracted inspection services.

History: (1)En. Sec. 8, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; Sec. 69-6608, R.C.M. 1947; (2)En. Sec. 9, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 2, Ch. 437, L. 1977; Sec. 69-6609, R.C.M. 1947; R.C.M. 1947, 69-6608, 69-6609.

23-2-715. Assessment on passenger tramway receipts. The department of administration is hereby authorized to impose an assessment of ¼ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the general fund by December 31 of each year. All proceeds of the gross receipts assessment shall be used only to support the duties of the department set forth in this part.

History: **En. 69-6608.1 by Sec. 1, Ch. 437, L. 1977; R.C.M. 1947, 69-6608.1.**

23-2-716 through 23-2-720 reserved.

23-2-721. Additional powers and duties of department. In addition to all other powers and duties conferred and imposed upon the department by this part, the department shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which may not relate or pertain to an area served by a passenger tramway. In adopting such rules the department shall:

(a) use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways", ANSI B 77.1—1970, as amended from time to time or equivalent and as amended or supplemented from time to time by the department;

(b) hold hearings and take in all evidence relating to the adoption of these rules;

(2) supply to each operator a copy of its rules and each amendment thereto or revision thereof;

(3) avoid discrimination in application of the rules to operators of passenger tramways;

(4) hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the department, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

(5) approve, deny, revoke, and renew the registrations provided for in this part;

(6) cause the prosecution and enjoinder of all persons violating the provisions of this part and incur the necessary expenses thereof;

(7) employ, within the funds available, and prescribe the duties of such personnel as the department considers necessary.

History: **En. Sec. 10, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 20, Ch. 124, L. 1977; R.C.M. 1947, 69-6610.**

23-2-722. Inspection of tramways. The department may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the department may reasonably require. The department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules exists or a condition in passenger tramway construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611.

23-2-723. Order for corrective action and compliance. If, after investigation, the department finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered or certified mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612.

23-2-724. Remedies to enforce compliance. If any operator fails to comply with a legal order or rule of the department, the department, at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the department shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613.

23-2-725. Judicial review. Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of 23-2-731 through 23-2-737 to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

History: En. Sec. 1, Ch. 509, L. 1979.

Compiler's Comments

Incorporation into Existing Law. Sections 23-2-731 through 23-2-737 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of Title 23, chapter 2, part 7, and the Code Commissioner has codified them accordingly. This arrangement may make the definitions in 23-2-702 applicable to these sections. See 1-11-103(4).

23-2-732. Definitions. As used in 23-2-731 through 23-2-737, the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include a person using an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

History: **En. Sec. 2, Ch. 509, L. 1979.**

23-2-733. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

History: **En. Sec. 3, Ch. 509, L. 1979.**

23-2-734. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

History: **En. Sec. 4, Ch. 509, L. 1979.**

23-2-735. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

History: **En. Sec. 5, Ch. 509, L. 1979.**

23-2-736. Skier's assumption of responsibility — duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

History: En. Sec. 6, Ch. 509, L. 1979.

23-2-737. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a ski area operator for loss or damage resulting from any risk inherent in the sport of skiing as described in 23-2-736.

History: En. Sec. 7, Ch. 509, L. 1979.

CHAPTER 3

ATHLETICS

Part 1 — State Board of Athletics

Section

23-3-101. Definitions.
23-3-102. Board of athletics.
23-3-103. Department's duties.

Part 2 — Boxing, Sparring, and Wrestling Matches

23-3-201. Jurisdiction over boxing, sparring, and wrestling matches — licenses — application for license.
23-3-202. Construction and equipment of buildings.
23-3-203. Duration of bouts — glove specifications — physical examination of participants.
23-3-204. Forfeiture of license for conducting fake bouts.
23-3-205. Penalty for participating in fake bouts.
23-3-206. Report of ticket sales — tax on gross receipts — disposition of tax moneys received.
23-3-207. Bond of applicant for license.
23-3-208. Examination of books and records on failure to make report or unsatisfactory report — penalty for failure to pay tax.
23-3-209. Violations constitute misdemeanor.

Part 1

State Board of Athletics

23-3-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of athletics provided for in 2-15-1661.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: En. 82-301.1 by Sec. 346, Ch. 350, L. 1974; R.C.M. 1947, 82-301.1.

23-3-102. Board of athletics. The members of the board of athletics shall serve without compensation but shall be allowed travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, to be paid by the state treasurer on warrant properly drawn, out of the proceeds of the tax collected under this chapter. Before April 1 of each year the board shall elect one of its number chairman, shall adopt a seal for the board, and may adopt rules for the administration of its office. Two of the members of the board constitute a quorum to do business, and the concurrence of at least two members is necessary to render a choice or decision by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R.C.M. 1921; amd. Sec. 1, Ch. 103, L. 1927; re-en. Sec. 4551, R.C.M. 1935; amd. Sec. 345, Ch. 350, L. 1974; amd. Sec. 19, Ch. 453, L. 1977; R.C.M. 1947, 82-301.

23-3-103. Department's duties. The department shall keep a record of the board's proceedings, preserve the board's books, documents, and papers, and prepare for service notices and other papers required by the board. It may under direction of the board issue subpoenas for the attendance of witnesses before the board and may under direction of the board administer oaths in matters pertaining to the administration of the affairs of the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1927; re-en. Sec. 4552, R.C.M. 1935; amd. Sec. 36, Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974; R.C.M. 1947, 82-302.

Part 2

Boxing, Sparring, and Wrestling Matches

23-3-201. Jurisdiction over boxing, sparring, and wrestling matches — licenses — application for license. (1) The board has the sole direction, management, control, and jurisdiction over boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within this state by a club, corporation, or association. No boxing, sparring, or wrestling match or exhibition may be conducted, held, or given within this state except when licensed in accordance with this part.

(2) The board may grant or revoke, subject to 37-1-101 and 37-1-102, a license to conduct, hold, or give boxing, sparring, and wrestling matches and exhibitions to a club, corporation, or association which, if it is an amateur

athletic association, may be incorporated or organized under rules adopted by the board.

(3) This part does not apply to or prohibit amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums.

(4) A license is subject to rules the board makes.

(5) An application for a license shall be in writing and addressed to the department and verified by an officer of the club, corporation, or association on whose behalf the application is made. It shall contain facts which show the applicant entitled to receive a license and other facts and recitals the board by rule requires to be shown.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R.C.M. 1921; amd. Sec. 3, Ch. 103, L. 1927; re-en. Sec. 4554, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974; amd. Sec. 1, Ch. 5, L. 1977; R.C.M. 1947, 82-303.

23-3-202. Construction and equipment of buildings. All buildings or structures used or intended to be used for the purpose of this part shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the law, ordinances, and regulations pertaining to buildings in the city, town, or village where situated. Where a part of a building or structure is used for the purpose set forth in this part, this section shall apply in the same manner.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R.C.M. 1921; amd. Sec. 4, Ch. 103, L. 1927; re-en. Sec. 4555, R.C.M. 1935; R.C.M. 1947, 82-304.

23-3-203. Duration of bouts — glove specifications — physical examination of participants. A boxing or sparring match or exhibition may be not more than 20 rounds in length, and the contestants shall wear, during these contests, gloves weighing at least 6 ounces. No person may take part in an exhibition or sparring match unless he has first passed a rigorous physical examination to determine his fitness to engage in the exhibition. The examination is to be conducted by a regular practicing physician designated by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R.C.M. 1921; amd. Sec. 5, Ch. 103, L. 1927; re-en. Sec. 4556, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974; R.C.M. 1947, 82-305.

23-3-204. Forfeiture of license for conducting fake bouts. A club, corporation, or association which conducts, holds, gives, or participates in a sham or fake boxing or sparring match or exhibition shall forfeit the license issued under this part, and it may not thereafter receive another license under this part.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R.C.M. 1921; amd. Sec. 6, Ch. 103, L. 1927; re-en. Sec. 4557, R.C.M. 1935; amd. Sec. 350, Ch. 350, L. 1974; R.C.M. 1947, 82-306.

23-3-205. Penalty for participating in fake bouts. Any contestant who shall participate in any sham or fake boxing or sparring match or exhibition shall be penalized in the following manner:

(1) For the first offense, he shall be restrained for a period of 6 months, such period to begin immediately after the occurrence of such offense, from participating in any competition to be held or given by any club, corporation, or association duly licensed to give or hold such boxing or sparring match or exhibition.

(2) For the second offense, he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation, or association duly licensed for said purpose.

History: **En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4558, R.C.M. 1921; amd. Sec. 7, Ch. 103, L. 1927; re-en. Sec. 4558, R.C.M. 1935; R.C.M. 1947, 82-307.**

23-3-206. Report of ticket sales — tax on gross receipts — disposition of tax moneys received. An individual, club, corporation, or association which exercises the privileges conferred by this part shall, within 24 hours after the completion of a boxing, sparring, or wrestling contest or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the boxing, sparring, or wrestling contest or exhibition, the amount of gross proceeds, and such other matters as the board prescribes and shall also within 24 hours pay to the department a tax of 5% of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets of admission to the boxing, sparring, or wrestling match or exhibition. The tax shall be deposited by the department in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R.C.M. 1921; amd. Sec. 8, Ch. 103, L. 1927; re-en. Sec. 4559, R.C.M. 1935; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974; amd. Sec. 1, Ch. 217, L. 1975; R.C.M. 1947, 82-308.**

23-3-207. Bond of applicant for license. Before a license is granted to a club, corporation, individual, or association to conduct, hold, or give a boxing, sparring, or wrestling match or exhibition, the applicant shall file with the department a surety bond, executed by a surety company authorized to do business in this state, in the sum of not less than $2,000 and not more than $5,000, payable to this state, to be approved as to the amount by the board. The bond shall be conditioned on the payment of the tax imposed by 23-3-206, and any person injured by the willful, malicious, or wrongful act of the licensee may bring an action on the surety bond in his own name to recover damages suffered by reason of such willful, malicious, or wrongful act. The surety bond shall remain in effect for 30 days beyond the license period granted by the board. Cash or its equivalent may be deposited with the department in lieu of the surety bond, but it is subject to the same time limits and conditions as a surety bond. On the filing and approval of the surety bond, the department shall issue to the applicant a license.

History: **En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R.C.M. 1921; amd. Sec. 9, Ch. 103, L. 1927; re-en. Sec. 4560, R.C.M. 1935; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974; amd. Sec. 2, Ch. 217, L. 1975; R.C.M. 1947, 82-309.**

23-3-208. Examination of books and records on failure to make report or unsatisfactory report — penalty for failure to pay tax.

(1) When a club, corporation, or association fails to make a report of a contest at the time prescribed by this part or when the report is unsatisfactory to the board, it may examine or have examined the books and records of the club, corporation, or association and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this part, which tax it may, as the result of the examination, fix and determine.

(2) In case of default in the payment of tax ascertained to be due, together with the expenses incurred in making the examination, for a period of 20 days after notice to the delinquent club, corporation, or association of the amount at which it may be fixed by the board, the delinquent shall forfeit its license and is disqualified from receiving a new license or a renewal of license. It shall in addition forfeit to this state the sum of $500, which may be recovered by the attorney general in the name of this state in the same manner as other penalties are by law recovered and when collected shall be used and applied as other moneys received under this part.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R.C.M. 1921; amd. Sec. 10, Ch. 103, L. 1927; re-en. Sec. 4561, R.C.M. 1935; amd. Sec. 353, Ch. 350, L. 1974; R.C.M. 1947, 82-310.

23-3-209. Violations constitute misdemeanor. Any person who violates any of the provisions of this part, for which a penalty is not herein expressly prescribed, shall be guilty of a misdemeanor.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4562, R.C.M. 1921; amd. Sec. 11, Ch. 103, L. 1927; re-en. Sec. 4562, R.C.M. 1935; R.C.M. 1947, 82-311.

CHAPTER 4

HORSE RACING

Part 1 — Administration

Section
23-4-101. Definitions.
23-4-102. Chairman — quorum — costs — salary.
23-4-103. Department's report — public record.
23-4-104. Duties of board.
23-4-105. Authority of board.

Part 2 — Race Meets

23-4-201. Licenses.
23-4-202. Penalty for violations of law — authority of board.
23-4-203. Race meets — when lawful.
23-4-204. Race exclusively for Montana-bred horses — bonus for winner.
23-4-205. Public liability insurance.

Part 3 — Parimutuel Betting

23-4-301. Parimutuel betting — other betting illegal.
23-4-302. Distribution of deposits — breakage.
23-4-303. Licensee's right to withhold deposits.

23-4-304. Gross receipts — department's percentage — collection and allocation.
23-4-305. Deposit of unclaimed money.

Part 1

Administration

23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horse racing provided for in 2-15-1662.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Persons" means individuals, firms, corporations, and associations.

(4) "Race meet" means an exhibition of thoroughbred, purebred, or registered horse racing where the parimutuel system of wagering is used.

History: En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974; R.C.M. 1947, 62-502.

23-4-102. Chairman — quorum — costs — salary. (1) The board shall organize by electing one of its members chairman. Three members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in his official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974; amd. Sec. 9, Ch. 453, L. 1977; R.C.M. 1947, 62-503.

23-4-103. Department's report — public record. (1) The department shall keep detailed records of board meetings, of the business transacted at the meetings, and licenses applied for and issued.

(2) Records of the board kept by the department are public records subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974; R.C.M. 1947, 62-504.

23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state; and

(8) the veterinary practices and standards which must be observed in connection with race meets.

History: En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; R.C.M. 1947, 62-505(part).

23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-102, license, regulate, and supervise race meets held in this state under this chapter and shall have the places where race meets are held visited and inspected at least once a year.

History: En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974; R.C.M. 1947, 62-506.

Part 2

Race Meets

23-4-201. Licenses. (1) It is unlawful for a person to hold a race meet in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file an application with the department which shall set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet shall be licensed and charged an annual fee not to exceed $15, which shall be paid to the department and used for expenses of the board, subject to 37-1-101(6). Each person holding a license under this chapter and every owner, trainer, jockey, and attendant at a racecourse in this state shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A person who has been convicted of a crime involving moral turpitude may not be issued a license of any kind, nor may a license be issued to a person who has violated this chapter or the rules of the board or who has failed to pay the fees, taxes, or moneys required under this chapter.

(4) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board conducting race meets in conjunction with its regularly scheduled fair shall meet the requirements of the rules adopted by the board before granting a license. An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

History: (1), (3) thru (5)En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974; Sec. 62-507, R.C.M. 1947; (2)En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; Sec. 62-505, R.C.M. 1947; R.C.M. 1947, 62-505(part), 62-507.

23-4-202. Penalty for violations of law — authority of board. (1) A person holding a race meet, an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing.

(3) The board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $500, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part).

23-4-203. Race meets — when lawful. It is lawful to conduct race meets at a racetrack or otherwise at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part).

23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable thoroughbred, purebred, quarter horse, appaloosa, or registered horses, at least one race each day at each race meet shall be limited to horses bred in this state. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

History: En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974; amd. Sec. 2, Ch. 306, L. 1977; R.C.M. 1947, 62-509.

23-4-205. Public liability insurance. For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet under this chapter shall carry public liability insurance in an amount and form of contract approved by the board.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974; R.C.M. 1947, 62-510.

Part 3

Parimutuel Betting

23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by the licensee at the race meet, if the parimutuel system is conducted under this chapter and the rules of the board.

(3) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than

by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

History: **En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974; R.C.M. 1947, 62-511.**

23-4-302. Distribution of deposits — breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

History: **En. Sec. 12, Ch. 196, L. 1965; R.C.M. 1947, 62-512.**

23-4-303. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee by a special tax on the money so deposited under the parimutuel system or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid percent and breakage the amount of the tax so levied.

History: **En. Sec. 13, Ch. 196, L. 1965; R.C.M. 1947, 62-513.**

23-4-304. Gross receipts — department's percentage — collection and allocation. The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter.

History: **En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974; R.C.M. 1947, 62-514.**

23-4-305. Deposit of unclaimed money. Each licensee holding a horse race meeting shall within 30 days of the end of the meeting pay to the department for deposit in the earmarked revenue fund for the board of horse racing all unclaimed winning ticket money from any parimutuel pool.

History: **En. 62-515 by Sec. 1, Ch. 199, L. 1974; R.C.M. 1947, 62-515.**

CHAPTER 5

GAMBLING

Part 1 — Prohibited Games—Penalties

Section

23-5-101. Definitions.
23-5-102. Gambling prohibited — penalty.
23-5-103. Possession of gambling implements prohibited.
23-5-104. Slot machines — possession unlawful.
23-5-105. Penalty for possession or permitting use of slot machine.
23-5-106. Brace and bunco games prohibited.
23-5-107. Obtaining money by means of gambling games or tricks considered theft.
23-5-108. Soliciting or persuading persons to visit gambling resorts prohibited.

23-5-109. Penalty for second offense.
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23-5-121. Duty of peace officer to seize gambling implements and apparatus.
23-5-122. Destruction of gambling apparatus — when required.
23-5-123. Disposal of moneys confiscated by reason of violation of gambling laws.
23-5-124. Duty of peace officer to make complaint.
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23-5-508. Peace officers' responsibilities.
23-5-509. Penalty.
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23-5-511. Prior law still in effect.

Part 1

Prohibited Games — Penalties

23-5-101. Definitions. (1) A slot machine is defined as a machine operated by inserting a coin, token, chip, trade check, or paper currency therein by the player and from the play of which he obtains or may obtain money, checks, chips, tokens, or paper currency redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this part.

(2) In addition to their ordinary meaning, the words "person" or "persons", as used in this part, include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious, fraternal, and charitable organizations.

History: En. Secs. 2, 3, Ch. 197, L. 1949; Secs. 94-2429, 94-2431, R.C.M. 1947; redes. 94-8-429, 94-8-430 by Sec. 29, Ch. 513, L. 1973; amd. Secs. 24, 25, Ch. 508, L. 1977; R.C.M. 1947, 94-8-429, 94-8-430.

23-5-102. Gambling prohibited — penalty. Except as otherwise provided by law, a person who engages in gambling in any form with cards, dice, or other implements or devices of any kind wherein anything valuable may be wagered upon the outcome or who keeps any establishment, place, equipment, or apparatus for such gambling or any agents or employees for such purpose is guilty of a misdemeanor and is punishable by a fine of not less than $100 or more than $1,000 or imprisonment not less than 3 months or more than 1 year or by both such fine and imprisonment.

History: En. Sec. 600, Pen. C. 1895; amd. Sec. 1, p. 80, L. 1897; amd. Secs. 1, 2 and 3, pp. 166, 167, L. 1901; amd. Sec. 1, Ch. 115, L. 1907; re-en. Sec. 8416, Rev. C. 1907; amd. Sec. 1, Ch. 86,

L. 1917; re-en. Sec. 11159, R.C.M. 1921; Cal. Pen. C. Sec. 330; re-en. Sec. 11159, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1937; Sec. 94-2401, R.C.M. 1947; redes. 94-8-401 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 508, L. 1977; R.C.M. 1947, 94-8-401.

23-5-103. Possession of gambling implements prohibited. Any person who has in his possession or under his control or who permits to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control any faro box, faro layout, roulette wheel, roulette table, crap table, punchboard, or any machine or apparatus of the kind mentioned in 23-5-102 is punishable by a fine of not less than $100 or more than $1,000 and may be imprisoned for not less than 3 months or more than 1 year in the discretion of the court, provided that this section shall not apply to a public officer or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law.

History: En. Sec. 2, Ch. 115, L. 1907; Sec. 8417, Rev. C. 1907; re-en. Sec. 11160, R.C.M. 1921; re-en. Sec. 11160, R.C.M. 1935; Sec. 94-2404, R.C.M. 1947; redes. 94-8-404 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 20, Ch. 508, L. 1977; R.C.M. 1947, 94-8-404.

23-5-104. Slot machines — possession unlawful. It shall be a misdemeanor and punishable as hereinafter provided for any person to use, possess, operate, keep, or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949; Sec. 94-2429, R.C.M. 1947; redes. 94-8-428 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-428.

23-5-105. Penalty for possession or permitting use of slot machine. Any person who violates any of the provisions of 23-5-104 or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied, or controlled by him is guilty of a misdemeanor and is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 1 year or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R.C.M. 1947; redes. 94-8-431 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 508, L. 1977; R.C.M. 1947, 94-8-431.

23-5-106. Brace and bunco games prohibited. Every person who uses or deals with or wins any money or property by the use of brace faro, any two-card faro box, any brace roulette wheel or roulette table, any brace apparatus, with loaded dice or with marked cards, or by any game commonly known as a confidence game or bunco is punishable by imprisonment in the state prison not exceeding 5 years.

History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R.C.M. 1921; re-en. Sec. 11162, R.C.M. 1935; Sec. 94-2406, R.C.M. 1947; redes. 94-8-406 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-406.

23-5-107. Obtaining money by means of gambling games or tricks considered theft. Every person who, by means of any game, device, sleight-of-hand trick, or other means whatever, by the use of cards or other implements other than those mentioned in 23-5-106, or while betting on sides or hands of any such game or play, fraudulently obtains from another person money or property of any description is guilty of theft of property of like value.

History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R.C.M. 1921; Cal. Pen. C. Sec. 332; re-en. Sec. 11161, R.C.M. 1935; Sec. 94-2405, R.C.M. 1947; redes. 94-8-405 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 70, Ch. 359, L. 1977; R.C.M. 1947, 94-8-405.

23-5-108. Soliciting or persuading persons to visit gambling resorts prohibited. Any person who persuades or solicits another to visit any room, tent, apartment, or place used or represented by the person soliciting or persuading to be a place used for the purpose of running any of the games prohibited by this part shall be punished by a fine of not less than $100 or more than $1,000 or imprisonment not less than 3 months or more than 1 year or by both such fine and imprisonment in the county jail.

History: En. Sec. 5, Ch. 115, L. 1907; Sec. 8420, Rev. C. 1907; re-en. Sec. 11163, R.C.M. 1921; Cal. Pen. C. Sec. 318; re-en. Sec. 11163, R.C.M. 1935; Sec. 94-2407, R.C.M. 1947; redes. 94-8-407 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-407.

23-5-109. Penalty for second offense. Every person who, having been convicted of a violation of any of the provisions of this part which is punishable by fine, commits another such violation after such conviction is punishable by a fine of not less than $500 or more than $1,000 and by imprisonment in the county jail for not less than 6 months or more than 1 year.

History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R.C.M. 1921; re-en. Sec. 11164, R.C.M. 1935; Sec. 94-2408, R.C.M. 1947; redes. 94-8-408 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-408.

23-5-110 through 23-5-120 reserved.

23-5-121. Duty of peace officer to seize gambling implements and apparatus. It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus, or instrument answering to the description contained in this part or which may be used for the carrying on or conducting of any game or games mentioned in this part and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus, or instrument and the prisoner, if there be one, before a committing magistrate.

History: En. Sec. 8, Ch. 115, L. 1907; Sec. 8423, Rev. C. 1907; re-en. Sec. 11166, R.C.M. 1921; re-en. Sec. 11166, R.C.M. 1935; Sec. 94-2410, R.C.M. 1947; redes. 94-8-410 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-410.

23-5-122. Destruction of gambling apparatus — when required. The magistrate before whom any machine, apparatus, or instrument is brought pursuant to 23-5-121 must, if there is a prisoner and if he holds such prisoner, cause the machine, apparatus, or instrument to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there is no prisoner or if the magistrate does not hold the prisoner, the magistrate must cause the immediate and public destruction of the machine, apparatus, or instrument in his own presence. No person owning or claiming to own any such machine, apparatus, or instrument so destroyed has any right of action against any person or against the state, county, or city for the value of such article or for damages. It is the duty of the county attorney to produce such articles in court on the trial of the case. It is the duty of the trial court, after the disposition of the case and whether the defendant is convicted, acquitted, or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court.

History: En. Sec. 9, Ch. 115, L. 1907; Sec. 8424, Rev. C. 1907; re-en. Sec. 11167, R.C.M. 1921; re-en. Sec. 11167, R.C.M. 1935; Sec. 94-2411, R.C.M. 1947; redes. 94-8-411 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 21, Ch. 508, L. 1977; R.C.M. 1947, 94-8-411.

23-5-123. Disposal of moneys confiscated by reason of violation of gambling laws. All moneys seized or taken by any peace officer and confiscated by order of any court, by reason of a violation of the gambling laws of the state of Montana, shall be deposited with the county treasurer of the county in which such seizure and confiscation was made and shall be credited to the poor fund of the county.

History: En. Sec. 1, Ch. 25, L. 1933; re-en. Sec. 11167.1, R.C.M. 1935; Sec. 94-2412, R.C.M. 1947; redes. 94-8-412 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-412.

23-5-124. Duty of peace officer to make complaint. Every county attorney, sheriff, constable, chief of police, marshal, or police officer must inform against and make complaint and diligently prosecute persons whom they know or concerning whom they may be informed or whom they may have reasonable cause to believe to be offenders against the provisions of this part. The neglect or refusal of any such officer to make complaint against or diligently prosecute persons he has reasonable cause to believe to be offenders against the provisions of this part shall be deemed sufficient cause for removal from office.

History: En. Sec. 11, Ch. 115, L. 1907; Sec. 8426, Rev. C. 1907; re-en. Sec. 11169, R.C.M. 1921; re-en. Sec. 11169, R.C.M. 1935; Sec. 94-2414, R.C.M. 1947; redes. 94-8-414 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-414.

23-5-125. Duty of mayors to enforce law. It shall be the duty of every mayor of every town or city in this state to cause this part to be diligently enforced and to cause the police officers of his city or town to arrest and to make complaint against any and all persons whom he or they know or have reasonable cause to believe to be offenders against any of the provisions of this part.

History: En. Sec. 12, Ch. 115, L. 1907; Sec. 8427, Rev. C. 1907; re-en. Sec. 11170, R.C.M. 1921; re-en. Sec. 11170, R.C.M. 1935; Sec. 94-2415, R.C.M. 1947; redes. 94-8-415 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-415.

23-5-126. Officers neglecting duty subject to forfeiture of office. Every county attorney, sheriff, mayor, constable, chief of police, marshal, or police officer who shall refuse or neglect to perform any of the duties imposed upon him by any of the provisions of this part shall be guilty of a misdemeanor and be punishable by a fine of not less than $100 or more than $3,000 or imprisonment for not less than 6 months or more than 1 year in the county jail. A conviction under this section shall, unless set aside, also work a forfeiture of the office of such officer and operate as a removal from office. But a prosecution under this section shall not bar or interfere with any proceeding or action for removal from office which may be brought under any other provision of law or statute or affect or limit the effect or operation of any other statute regarding removals or suspensions from office.

History: En. Sec. 13, Ch. 115, L. 1907; Sec. 8428, Rev. C. 1907; re-en. Sec. 11171, R.C.M. 1921; re-en. Sec. 11171, R.C.M. 1935; Sec. 94-2416, R.C.M. 1947; redes. 94-8-416 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-416.

23-5-127. Receiving money to protect offenders prohibited. Every state, county, city, or township officer or other person who shall ask for, receive, or collect any money or valuable consideration, either for his own or for the public use or the use of any other person or persons, for and with the understanding that he will protect or exempt any person from arrest or conviction for any violation of the provisions of this part or that he will abstain from arresting or prosecuting or causing to be arrested or prosecuted any person offending against any of the provisions of this part or that he will permit any of the things prohibited by this part to be done or carried on and every such state, county, city, or township officer who shall grant, issue, or deliver or cause to be issued or delivered to any person or persons any license, permit, or other privilege giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be conducted, opened, or carried on any game or games which are forbidden by any of the provisions of this part is guilty of a felony.

History: En. Sec. 14, Ch. 115, L. 1907; Sec. 8429, Rev. C. 1907; re-en. Sec. 11172, R.C.M. 1921; Cal. Pen. C. Sec. 337; re-en. Sec. 11172, R.C.M. 1935; Sec. 94-2417, R.C.M. 1947; redes. 94-8-417 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-417.

23-5-128 through 23-5-130 reserved.

23-5-131. Losses at gambling may be recovered in civil action. If any person, by playing or betting at any of the games prohibited by this part, loses to another person any sum of money or thing of value and pays or delivers the same or any part thereof to any person connected with the operating or conducting of such game, either as owner, dealer, or operator, the person who so loses and pays or delivers may, at any time within 60 days next after the loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered or any part thereof from any person having any interest, direct or contingent, in the game as owner, backer, or otherwise, with costs of suit, by civil action before any court of competent jurisdiction, together with exemplary damages which in no case shall be less than $50 or more than $500, and may join as defendants in said suit all persons having any interest, direct or contingent, in such game as backers, owners, or otherwise.

History: En. Sec. 15, Ch. 115, L. 1907; Sec. 8430, Rev. C. 1907; re-en. Sec. 11173, R.C.M. 1921; re-en. Sec. 11173, R.C.M. 1935; Sec. 94-2418, R.C.M. 1947; redes. 94-8-418 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-418.

23-5-132. Remedy available to dependents. If any person losing such money or thing of value does not, within 60 days, without collusion or deceit, sue and with effect prosecute for the money or thing of value so lost and paid or delivered, any person or a guardian of any person dependent in any degree for support upon or entitled to the earnings of such persons losing said money or thing of value or any citizen for the use of the person so dependent may, within 1 year, sue for and recover the same, with costs of suit and exemplary damages as aforesaid, against any and all persons having any interest, direct or contingent, in the game as backers, owners, or otherwise.

History: En. Sec. 16, Ch. 115, L. 1907; Sec. 8431, Rev. C. 1907; re-en. Sec. 11174, R.C.M. 1921; re-en. Sec. 11174, R.C.M. 1935; Sec. 94-2419, R.C.M. 1947; redes. 94-8-419 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-419.

23-5-133. Pleadings in actions to recover moneys lost. In the prosecutions of such actions it shall be sufficient for the complaint to allege that the defendant is indebted to the plaintiff's use the money or thing of value so lost and paid or delivered, whereby the plaintiff's action accrued to him or to the person for whose use the suit is brought, without setting forth the special matter. In case suit is brought by a plaintiff for the use of another person, that fact and the name of the person for whose use the suit is brought shall be stated.

History: En. Sec. 17, Ch. 115, L. 1907; Sec. 8432, Rev. C. 1907; re-en. Sec. 11175, R.C.M. 1921; re-en. Sec. 11175, R.C.M. 1935; Sec. 94-2420, R.C.M. 1947; redes. 94-8-420 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-420.

23-5-134. Discovery. Every person liable in a civil action under this part may be compelled to answer, upon oath, interrogatories annexed to the complaint in such civil action for the purpose of discovery of his liability.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).

23-5-135. Discharge of defendant. Upon discovery and repayment of the money or other thing, the person discovering and repaying the same, with costs and such an amount of exemplary damages as may be agreed upon by the parties or fixed by the court, shall be acquitted and discharged from any further or other forfeiture, punishment, penalty, or prosecution he or they may have incurred for so winning such money or thing discovered and repaid.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).

23-5-136 through 23-5-140 reserved.

23-5-141. Immunity of witnesses. No person shall be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of this part upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence of, documentary or otherwise, and no testimony or evidence so given or produced shall be received against him in any civil or criminal proceeding, action, or investigation.

History: En. Sec. 20, Ch. 115, L. 1907; Sec. 8435, Rev. C. 1907; re-en. Sec. 11178, R.C.M. 1921; re-en. Sec. 11178, R.C.M. 1935; Sec. 94-2423, R.C.M. 1947; redes. 94-8-423 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-423.

23-5-142. Ordinances concerning gambling. No ordinance regarding gambling or gambling houses may be passed by any city, or town, county, or other political subdivision of the state except in compliance with parts 3, 4, and 5 of this chapter.

History: En. Sec. 21, Ch. 115, L. 1907; Sec. 8436, Rev. C. 1907; re-en. Sec. 11179, R.C.M. 1921; re-en. Sec. 11179, R.C.M. 1935; Sec. 94-2424, R.C.M. 1947; redes. 94-8-424 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 23, Ch. 508, L. 1977; R.C.M. 1947, 94-8-424.

23-5-143. Lessor of buildings used for gambling purposes treated as principal. Whenever premises are occupied for the doing of any of the things or running any of the games prohibited by this part, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action or by action of unlawful detainer. If any person leases premises for any such purpose or knowingly permits them to be used or occupied for such purpose or purposes or, knowing them to be so occupied or used, fails immediately to prosecute in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in running the games or doing the things run or done in such building in violation of this part and shall be dealt with and punished accordingly.

History: En. Sec. 19, Ch. 115, L. 1907; Sec. 8434, Rev. C. 1907; re-en. Sec. 11177, R.C.M. 1921; re-en. Sec. 11177, R.C.M. 1935; Sec. 94-2422, R.C.M. 1947; redes. 94-8-422 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 22, Ch. 508, L. 1977; R.C.M. 1947, 94-8-422.

23-5-144. Maintaining gambling apparatus a nuisance. Any article, machine, or apparatus maintained or kept in violation of any of the provisions of this part is a public nuisance, but the punishment for the maintaining or keeping of the same shall be as provided in this part.

History: En. Sec. 7, Ch. 115, L. 1907; re-en. Sec. 8422, Rev. C. 1907; re-en. Sec. 11165, R.C.M. 1921; re-en. Sec. 11165, R.C.M. 1935; Sec. 94-2409, R.C.M. 1947; redes. 94-8-409 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-409.

Part 2

Prohibited Lotteries

23-5-201. Lottery defined. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it or for any share or interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, gift enterprise, or by whatever name the same may be known.

History: En. Sec. 580, Pen. C. 1895; re-en. Sec. 8406, Rev. C. 1907; re-en. Sec. 11149, R.C.M. 1921; Cal. Pen. C. Sec. 319; amd. Sec. 1, Ch. 36, L. 1935; re-en. Sec. 11149, R.C.M. 1935; Sec. 94-3001, R.C.M. 1947; redes. 94-8-301 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 17, Ch. 508, L. 1977; R.C.M. 1947, 94-8-301.

23-5-202. Application. This part shall not apply to the provisions of part 4 of this chapter or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings.

History: **En. Sec. 2, Ch. 36, L. 1935; re-en. Sec. 11149.1, R.C.M. 1935; Sec. 94-3002, R.C.M. 1947; redes. 94-8-302 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 18, Ch. 508, L. 1977; R.C.M. 1947, 94-8-302.**

23-5-203. Punishment for drawing lottery. Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

History: **En. Sec. 581, Pen. C. 1895; re-en. Sec. 8407, Rev. C. 1907; re-en. Sec. 11150, R.C.M. 1921; re-en. Sec. 11150, R.C.M. 1935; Sec. 94-3003, R.C.M. 1947; redes. 94-8-303 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-303.**

23-5-204. Punishment for selling lottery tickets. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery is guilty of a misdemeanor.

History: **En. Sec. 582, Pen. C. 1895; re-en. Sec. 8408, Rev. C. 1907; re-en. Sec. 11151, R.C.M. 1921; Cal. Pen. C. Sec. 321; re-en. Sec. 11151, R.C.M. 1935; Sec. 94-3004, R.C.M. 1947; redes. 94-8-304 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-304.**

23-5-205. Aiding lotteries. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise, in setting up, managing, or drawing any lottery or in selling or disposing of any ticket, chance, or share therein is guilty of a misdemeanor.

History: **En. Sec. 583, Pen. C. 1895; re-en. Sec. 8409, Rev. C. 1907; re-en. Sec. 11152, R.C.M. 1921; Cal. Pen. C. Sec. 322; re-en. Sec. 11152, R.C.M. 1935; Sec. 94-3005, R.C.M. 1947; redes. 94-8-305 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-305.**

23-5-206. Lottery offices — advertising lottery offices. Every person who opens, sets up, or keeps, by himself or by any other person, any office or any other place for the sale of or for registering the number of any ticket in any lottery within or without this state or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office is guilty of a misdemeanor.

History: **En. Sec. 584, Pen. C. 1895; re-en. Sec. 8410, Rev. C. 1907; re-en. Sec. 11153, R.C.M. 1921; Cal. Pen. C. Sec. 323; re-en. Sec. 11153, R.C.M. 1935; Sec. 94-3006, R.C.M. 1947; redes. 94-8-306 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-306.**

23-5-207. Insuring lottery tickets — publishing offers to insure. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same or any other property if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate or shall be drawn or not be drawn at any particular time or in any particular order or who promises or agrees to pay any sum of money or to deliver any goods, things in action, or property or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery or who publishes any notice or proposal of any of the purposes aforesaid is guilty of a misdemeanor.

History: En. Sec. 585, Pen. C. 1895; re-en. Sec. 8411, Rev. C. 1907; re-en. Sec. 11154, R.C.M. 1921; Cal. Pen. C. Sec. 324; re-en. Sec. 11154, R.C.M. 1935; Sec. 94-3007, R.C.M. 1947; redes. 94-8-307 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-307.

23-5-208. Property offered for disposal in lottery forfeited. All moneys or property offered for sale or distribution in violation of any of the provisions of this part are forfeited to the state and may be recovered by information filed or by an action brought by the attorney general or by any county attorney in the name of the state. Upon the filing of the information or complaint, the clerk of the court or, if the suit is in a justice court, the justice must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property and is issued in the same manner as attachments are issued from the district courts in civil cases.

History: En. Sec. 586, Pen. C. 1895; re-en. Sec. 8412, Rev. C. 1907; re-en. Sec. 11155, R.C.M. 1921; Cal. Pen. C. Sec. 325; re-en. Sec. 11155, R.C.M. 1935; Sec. 94-3008, R.C.M. 1947; redes. 94-8-308 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-308.

23-5-209. Letting building for lottery purposes. Every person who lets or permits to be used any building or vessel or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

History: En. Sec. 587, Pen. C. 1895; re-en. Sec. 8413, Rev. C. 1907; re-en. Sec. 11156, R.C.M. 1921; Cal. Pen. C. Sec. 326; re-en. Sec. 11156, R.C.M. 1935; Sec. 94-3009, R.C.M. 1947; redes. 94-8-309 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-309.

23-5-210. Lotteries out of this state. The provisions of this part are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state or country where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

History: En. Sec. 588, Pen. C. 1895; re-en. Sec. 8414, Rev. C. 1907; re-en. Sec. 11157, R.C.M. 1921; re-en. Sec. 11157, R.C.M. 1935; Sec. 94-3010, R.C.M. 1947; redes. 94-8-310 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-310.

23-5-211. Punishment. Every person convicted of any of the offenses mentioned in this part is punishable by imprisonment in the county jail not exceeding 1 year or by fine not exceeding $2,000, or both.

History: En. Sec. 589, Pen. C. 1895; re-en. Sec. 8415, Rev. C. 1907; re-en. Sec. 11158, R.C.M. 1921; re-en. Sec. 11158, R.C.M. 1935; Sec. 94-3011, R.C.M. 1947; redes. 94-8-311 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-311.

Part 3

Card Games Act

23-5-301. Short title. This part may be cited as the "Montana Card Games Act".

History: En. 62-701 by Sec. 1, Ch. 293, L. 1974; R.C.M. 1947, 62-701.

23-5-302. Definitions. As used in this part and unless the context requires otherwise, the following terms or phrases have the following meanings:

(1) "Authorized card game" means any card game permitted by this part.

(2) "Card game" means any game played with cards for which the prize is money or any item of value.

History: En. 62-702 by Sec. 2, Ch. 293, L. 1974; R.C.M. 1947, 62-702.

23-5-303. Prior laws still in effect. To the extent that they are not specifically superseded by provisions of this part or any other gambling law, the provisions of part 1 of this chapter remain in effect.

History: En. 62-714 by Sec. 14, Ch. 293, L. 1974; R.C.M. 1947, 62-714.

23-5-304 through 23-5-310 reserved.

23-5-311. Authorized card games. (1) It is unlawful for any person to conduct or participate in any card game or make any tables available for the playing of card games except those card games authorized by this part.

(2) The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker.

History: En. 62-703 by Sec. 3, Ch. 293, L. 1974; R.C.M. 1947, 62-703.

23-5-312. Prizes not to exceed one hundred dollars. No prize for any individual game shall exceed the value of $100. Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded.

History: En. 62-704 by Sec. 4, Ch. 293, L. 1974; R.C.M. 1947, 62-704.

23-5-313. Rules of play to be posted — rake-off approved. Rules governing the conduct of each game shall be prominently posted on the premises of any licensed establishment where such game is conducted. Such rules shall include notice of the maximum percentage rake-off, if any, and shall require that the person taking the rake-off do so in an obvious manner and only after announcing the amount of each rake-off, which shall only be taken at the conclusion of each game when the winner of each individual pot has been determined.

History: En. 62-705 by Sec. 5, Ch. 293, L. 1974; R.C.M. 1947, 62-705.

23-5-314. Gambling on cash basis. (1) In every authorized card game the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness may be offered or accepted as part of the price of participating in a card game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: En. 62-706 by Sec. 6, Ch. 293, L. 1974; amd. Sec. 1, Ch. 508, L. 1977; R.C.M. 1947, 62-706.

23-5-315. Minors not to participate. No person under the age of 18 years may be permitted to participate in any card game held, operated, or conducted pursuant to this part.

History: En. 62-709 by Sec. 9, Ch. 293, L. 1974; amd. Sec. 4, Ch. 508, L. 1977; R.C.M. 1947, 62-709.

23-5-316. Cheating unlawful. It shall be unlawful to conduct or participate in a card game authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game.

History: En. 62-710 by Sec. 10, Ch. 293, L. 1974; amd. Sec. 5, Ch. 508, L. 1977; R.C.M. 1947, 62-710.

23-5-317 through 23-5-320 reserved.

23-5-321. Licensing by local governing bodies. (1) Any city, town, or county may issue licenses for the games provided for in this part to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game as provided for in this part shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this part, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this part shall be deemed to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: En. 62-707 by Sec. 7, Ch. 293, L. 1974; amd. Sec. 2, Ch. 508, L. 1977; R.C.M. 1947, 62-707.

23-5-322. Regulation by governing body. (1) The governing body authorized to issue gambling licenses pursuant to this part may establish by ordinance or resolution regulations governing the qualifications for and the issuing, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this act has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this part.

History: En. 62-708 by Sec. 8, Ch. 293, L. 1974; amd. Sec. 3, Ch. 508, L. 1977; R.C.M. 1947, 62-708.

23-5-323. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-711 by Sec. 11, Ch. 293, L. 1974; R.C.M. 1947, 62-711.

23-5-324 through 23-5-330 reserved.

23-5-331. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part or any ordinance, resolution, or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: En. 62-712 by Sec. 12, Ch. 293, L. 1974; R.C.M. 1947, 62-712.

23-5-332. Jurisdiction. Jurisdiction for all cases involving violations of this part is in the district court.

History: En. 62-713 by Sec. 13, Ch. 293, L. 1974; amd. Sec. 6, Ch. 508, L. 1977; R.C.M. 1947, 62-713.

Part 4

Bingo and Raffles

23-5-401. Short title. This part shall be known and may be cited and referred to as the "Bingo and Raffles Law".

History: En. 62-715 by Sec. 1, Ch. 294, L. 1974; R.C.M. 1947, 62-715.

23-5-402. Definitions. As used in this part, unless the context requires otherwise, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random;

(b) "raffles", which are conducted by drawing for prizes.

(2) "Equipment" means:

(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo; or

(b) with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part).

23-5-403. Bingo and raffles exempt from prior law. Bingo and raffles as in this part authorized are exempt from the provisions of part 2 of this chapter.

History: En. 62-726 by Sec. 12, Ch. 294, L. 1974; R.C.M. 1947, 62-726.

23-5-404 through 23-5-410 reserved.

23-5-411. Bingo and raffles authorized. Conducting or participating in games of chance as defined in 23-5-402 and in accordance with the provisions of this part is lawful.

History: En. 62-715.1 by Sec. 7, Ch. 508, L. 1977; R.C.M. 1947, Sec. 62-715.1.

23-5-412. Bingo prizes. Bingo prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of $100 for each individual bingo award. The price for an individual bingo card shall not exceed 50 cents. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part).

23-5-413. Raffle prizes. Raffle prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of $1,000 for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part).

23-5-414. Restrictions on bingo and raffles. (1) In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) Raffles authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

History: En. 62-717 by Sec. 3, Ch. 294, L. 1974; R.C.M. 1947, 62-717.

23-5-415. Time limitations on raffle drawing. No raffle drawing may be held or winner determined unless the chances to participate have been offered for sale for at least 30 days prior to the drawing. The drawing shall take place no later than 90 days after the first offering for sale of chances to participate.

History: **En. 62-718 by Sec. 4, Ch. 294, L. 1974; R.C.M. 1947, 62-718.**

23-5-416. Minors not to participate. No person under the age of 18 years shall be permitted to participate in any game or games of chance held, operated, or conducted pursuant to this part.

History: **En. 62-721 by Sec. 7, Ch. 294, L. 1974; R.C.M. 1947, 62-721.**

23-5-417. Gambling on cash basis. (1) In every game of chance the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: **En. 62-724 by Sec. 10, Ch. 294, L. 1974; amd. Sec. 10, Ch. 508, L. 1977; R.C.M. 1947, 62-724.**

23-5-418. Cheating unlawful. It shall be unlawful to conduct or participate in a game of chance authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affect the outcome of the game.

History: **En. 62-725 by Sec. 11, Ch. 294, L. 1974; amd. Sec. 11, Ch. 508, L. 1977; R.C.M. 1947, 62-725.**

23-5-419 and 23-5-420 reserved.

23-5-421. Issuance of licenses by local governing bodies. (1) Any city, town, or county may issue licenses for games of chance provided for in this part to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game of chance as provided for in this part may be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this part, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this part shall be considered to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: **En. 62-719 by Sec. 5, Ch. 294, L. 1974; amd. Sec. 8, Ch. 508, L. 1977; R.C.M. 1947, 62-719.**

23-5-422. Regulations of governing body. (1) The governing body authorized to issue gambling licenses pursuant to this part may establish by ordinance or resolution regulations governing the qualifications for the issuance, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this part has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this part.

History: En. 62-720 by Sec. 6, Ch. 294, L. 1974; amd. Sec. 9, Ch. 508, L. 1977; R.C.M. 1947, 62-720.

23-5-423. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-722 by Sec. 8, Ch. 294, L. 1974; R.C.M. 1947, 62-722.

23-5-424 through 23-5-430 reserved.

23-5-431. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part or any ordinance, resolution, or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: En. 62-723 by Sec. 9, Ch. 294, L. 1974; R.C.M. 1947, 62-723.

Part 5

Sports Pools

23-5-501. Sports pool defined. "Sports pool" means a card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part).

23-5-502. Sports pools authorized. Conducting or participating in sports pools as defined and governed in this part is lawful.

History: En. 62-727.1 by Sec. 12, Ch. 508, L. 1977; R.C.M. 1947, 62-727.1.

23-5-503. Rules. (1) The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance, and the total amount to be paid to the winners.

(2) No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of $1, and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of $100. The winner of any sports pool shall receive a 100% payout of the value of the sports pool.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part).

23-5-504. Transportation exempt from federal law. The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

History: En. 62-728 by Sec. 2, Ch. 290, L. 1974; R.C.M. 1947, 62-728.

23-5-505. Gambling on cash basis. (1) In every sports pool the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play at the time the pool is entered. No check, credit card, note, I O U, or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a pool.

(2) No action based on a debt incurred in a sports pool is maintainable in a court of this state.

History: En. 62-729 by Sec. 3, Ch. 290, L. 1974; amd. Sec. 13, Ch. 508, L. 1977; R.C.M. 1947, 62-729.

23-5-506. Minors not to participate. No person under the age of 18 years may be permitted to participate in any sports pool held, operated, or conducted pursuant to this part.

History: En. 62-730 by Sec. 4, Ch. 290, L. 1974; amd. Sec. 14, Ch. 508, L. 1977; R.C.M. 1947, 62-730.

23-5-507. Cheating unlawful. It shall be unlawful to conduct or participate in a sports pool authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the pool.

History: En. 62-731 by Sec. 5, Ch. 290, L. 1974; amd. Sec. 15, Ch. 508, L. 1977; R.C.M. 1947, 62-731.

23-5-508. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: **En. 62-732 by Sec. 6, Ch. 290, L. 1974; R.C.M. 1947, 62-732.**

23-5-509. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: **En. 62-733 by Sec. 7, Ch. 290, L. 1974; R.C.M. 1947, 62-733.**

23-5-510. Jurisdiction. Jurisdiction for all violations of this part is in the district court.

History: **En. 62-735 by Sec. 9, Ch. 290, L. 1974; amd. Sec. 16, Ch. 508, L. 1977; R.C.M. 1947, 62-735.**

23-5-511. Prior law still in effect. To the extent that they are not specifically superseded by the provisions of this part or any other gambling law, the provisions of part 1 of this chapter remain in effect.

History: **En. 62-734 by Sec. 8, Ch. 290, L. 1974; R.C.M. 1947, 62-734.**

TITLE 24

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